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

I. This comprehensive report on the implementation of the Agreement on Textiles and Clothing (ATC) during the second 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 second 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 1998 to 20 July 2001.

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. The integration process is dealt with in Chapter II of the report, the application of the transitional safeguard mechanism in Chapter III. Matters relating to the application of GATT 1994 rules and disciplines, as defined in Articles 2, 3, 6 and 7, respectively, are addressed in Chapters II, IV, V and IX. Chapters VI to VIII and X to XIII cover other aspects of the implementation of the ATC and related matters. Practically each of the chapters listed above also includes comments and observations as well as assessments by the TMB, whenever applicable.

III. According to Article 8.11, the TMB's comprehensive report may include any recommendation as deemed appropriate by the TMB to the Council for Trade in Goods. Chapter XIV of the report is devoted to the overall assessment of the state of the implementation of the ATC. It also summarizes some of the main observations and includes recommendations for the consideration of the Council for Trade in Goods.

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I. 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 (1995-97, 1998-2001, 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[2]) 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 (during which the TMB's report was also introduced), the review was conducted through a number of formal and informal meetings of the Council[3] and its outcome was adopted by the CTG at its meeting of 16 February 1998.[4] 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".[5] Also, in describing the different important elements considered by the CTG during its major review, the text adopted by the Council makes specific references to the respective sections of the TMB's first comprehensive report.

3. As the second stage of the integration process under the ATC comprises the period 1 January 1998 to 31 December 2001, the CTG is expected to conduct its second major review before the end of 2001. The present comprehensive report on the implementation of the ATC during the second stage of the integration process was adopted and is being transmitted by the TMB pursuant to the provisions of Article 8.11.

4. 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.

5. 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 2001, 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 preparing the TMB's comprehensive report (G/TMB/24). Replies received from Members to this request and also to subsequent specific requests for clarification and comments addressed to a number of Members, have

[1] Unless otherwise specified, all Articles mentioned refer to the ATC.
[2] G/L/179.
[3] The minutes of the formal meetings are contained in G/C/M/23 to 29.
[4] See G/L/224.
[5] See G/L/224, paragraph 3.

also been taken into consideration in the relevant sections of this report.[6] 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.

6. The TMB adopted detailed reports after each of its meetings.[7] It also provided to the CTG, annual reports (in November 1997, November 1998, September 1999 and October 2000[8]), 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 confined to the TMB under Article 8.11, covers the period 1 January 1998 to 20 July 2001, the date of its adoption. Furthermore, the report also incorporates, to the extent necessary, issues and developments that took place during the first stage of the integration process, whether already reflected or not in the first comprehensive report adopted by the Body. This was done for the following main reasons:

- certain developments that occurred during Stage 2 cannot be fully understood and assessed without providing their necessary background;
- a number of important measures that were notified during Stage 1, continued to be applied also during Stage 2, and therefore formed part of the measures applied under the ATC during the period subject to the present report;
- also, some developments that took place during the last few months of the implementation of the first stage of the integration process, could not be included in the first comprehensive report;
- certain changes notified during Stage 2 affected matters relevant to Stage 1 or had their roots in developments that had taken place during that Stage.

7. In addition, since the notification of integration programmes for Stage 3 was required by the end of the year 2000, the report includes factual information on these integration programmes and provides an assessment on them.

8. While in conformity with what is indicated in paragraph 5, 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 is devoted to the overall assessment of the state of the implementation of the ATC; it summarizes some of the main observations made and also includes recommendations as deemed appropriate by the Body to the CTG.

9. Bearing in mind the second major review to be conducted by the CTG, the TMB decided to request the WTO Secretariat to provide 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 2001.

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[6] Such replies were received from the following Members: Canada; European Community; Hong Kong, China; Japan; Macau, China; Uruguay (on behalf of ITCB members, this contribution being referred to hereafter as the submission of ITCB members); Turkey; United States.

[7] For the reports adopted since the adoption of the TMB's first comprehensive report, see G/TMB/R/35 to G/TMB/R/80.

[8] These annual reports are contained, respectively, in G/L/206, G/L/270, G/L/318 and G/L/398.

II. INTEGRATION PROCESS

10. In accordance with the provisions of its Articles 1.1 and 9, the ATC provides for a transitional period of 10 years, during which the textiles and clothing sector, defined in terms of the products listed, together with their respective classification under the Harmonized Commodity Description and Coding System (HS) Nomenclature in the Annex to the ATC, has to be progressively integrated into the general rules of GATT 1994. As specified in Article 9, the ATC and all restrictions thereunder shall stand terminated on 1 January 2005, on which date the textiles and clothing sector shall be fully integrated into GATT 1994. Article 9 also states that "[t]here shall be no extension" of the ATC.

11. It also follows from the above that integration is a key concept embodied in the ATC, since it brings international trade in the sector 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 (i.e. MFA[9]) regime and, therefore, did not carry over such restrictions to the ATC. Integration is a progressive, staged process, unless 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. For all other Members, integration takes place, as a main rule, in four stages, on 1 January 1995, 1 January 1998, 1 January 2002 and 1 January 2005.[10] The choice of products to be integrated in any of the stages is left to the Members, within the parameters mentioned below. Integration programmes that were implemented during the first two stages and those that are to be implemented in Stage 3 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 Members' 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).

In addition, the respective programmes of integration had to be notified in detail to the TMB within the deadlines specified in the ATC. 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.

12. Under the ATC, the technical requirements, in broad terms, are the same in respect of all Members which notified integration programmes for the first three stages. However, Article 2.7 makes a distinction between Members which maintained restrictions under the MFA (these Members are referred to in Article 2.7(a)) and those Members which retained the right to use the transitional safeguard mechanism of the ATC (these latter Members are referred to in Article 2.7(b)). As it has already been observed by the TMB in its first comprehensive report[11], this distinction between Members is important from two inter-related points of view:

- the trade regime the Members carried over to the ATC; and

- the implication of integrating products into GATT 1994.

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[9] Arrangement Regarding International Trade in Textiles, or Multifiber Arrangement.

[10] This, however, does not preclude the possibility of integrating products earlier than provided for in an integration programme applicable to any of these stages (see the provisions of Article 2.10).

[11] See G/L/179, paragraphs 66 and 67.

Members referred to in Article 2.7(a) notified restrictions maintained under the MFA regime and carried them over to the ATC. In the case of these Members, the integration of a product into GATT 1994 has two consequences: first, the transitional safeguard mechanism cannot be used with respect to imports of such a product; second, any quantitative restriction maintained on such a product under the ATC (notified pursuant to Article 2.1) is, by virtue of integration, eliminated. For the Members referred to in Article 2.7(b), the effect of integration is to remove, with respect to the products integrated, the possibility of having recourse to the transitional safeguard mechanism. Since integration *ipso facto* removes restrictions maintained under the ATC (as opposed to those justified under GATT 1994), the effect of having selected products for integration is substantially different for Members referred to in Articles 2.7(a) and 2.7(b).

A. BACKGROUND: FIRST STAGE OF INTEGRATION (1995-1997)

13. Integration programmes notified by Members for the first stage of the integration process are dealt with in detail in the first comprehensive report adopted by the TMB at the end of July 1997.[12] However, for the sake of completeness and also due to the fact that there were subsequent developments affecting a number of Stage 1 integration programmes[13], a summary is provided below, based on the information at the TMB's disposal at the time of the adoption of the first comprehensive report.

14. The requirements for the first stage of integration are defined in Article 2.6, which states that "[o]n 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 Members' 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".

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

(a) Integration programmes notified before the entering into force of the ATC

15. Pursuant to Articles 2.6 and 2.7(a), the Members which had maintained restrictions under the MFA had to notify their respective integration programmes to the GATT Secretariat no later than 1 October 1994, in accordance with a decision taken by Ministers at Marrakesh on 15 April 1994. Canada, the European Community, Norway and the United States submitted notifications under these provisions within the deadline prescribed. In reviewing these notifications, the TMB noted that, in accordance with Article 2.6, the volume of products integrated by Canada, the European Community, Norway and the United States amounted to at least 16 per cent of the total volume of the respective Members' 1990 imports of the products falling under the coverage of the ATC and included products from each of the main product groups. Canada integrated 16.34 per cent[14] of the volume of its 1990 imports of the products in the Annex, of which 59 per cent were of tops and yarns, 26 per cent of fabrics, 8 per cent of made-ups and 7 per cent of clothing products. The European Community[15] notified that it would integrate 16.4 per cent of the volume of the Community's 1990 imports of the products in the Annex, of which 27 per cent were tops and yarns, 49 per cent fabrics, 22 per cent

[12] See G/L/179, paragraphs 11 to 38.

[13] For subsequent developments, see paragraphs 29 to 45.

[14] The percentages indicated were subsequently revised as a result of corrections made by Canada during Stage 1 and in the context of the notification by Canada of its Stage 3 integration programme (see paragraphs 39, 40 and 82).

[15] EC 12 (at the time the notification was made, the European Community comprised 12 member States; since it was anticipated that it would comprise 16 member States by 1 January 1995, data for those 16 Members were also provided).

made-ups and 2 per cent clothing products.[16] According to its notification, Norway integrated 16.26 per cent of the volume of its 1990 imports of the products in the Annex, of which 22 per cent were tops and yarns, 73 per cent fabrics, 4 per cent made-ups and 1 per cent clothing products.[17] The United States integrated 16.21 per cent of the volume of its 1990 imports of the products in the Annex, of which 52 per cent were tops and yarns, 15 per cent fabrics, 20 per cent made-ups and 13 per cent clothing products.

16. In its 1996 (annual) report and in the first comprehensive report, the TMB made a number of observations regarding the integration programmes notified pursuant to Articles 2.6 and 2.7(a). It noted, *inter alia*, that the products integrated, with the exception of Canada for one product (work gloves), had not been, prior to their integration into GATT 1994, subject to the quantitative restrictions notified under Article 2.1. The TMB also observed that though the respective integration programmes included products from each of the product groups specified in Article 2.6, the share of tops and yarns, and fabrics was significantly higher than that of made-up textile products and clothing. Furthermore, since the products integrated were concentrated in the relatively less value-added range of products, it appeared that the share of products integrated, expressed in value terms, was smaller than that expressed in volume.

17. In the first comprehensive report, the TMB noted also that no notification under Article 2.10[18] on advanced or earlier integration of products during Stage 1 had been made by Members having submitted integration programmes under Article 2.7(a).

(b) Implications of integrating 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

18. In February 1997, the TMB received a notification from Colombia, also on behalf of a number of other WTO Members that are also members of the International Textiles and Clothing Bureau (ITCB), alleging certain discrepancies in the programme of integration notified by the European Community under Article 2.6, and requesting the TMB to review this matter in terms of Article 2.21. In particular, in the view of Colombia, the European Community had integrated in the first stage certain textile and clothing products of HS Chapters 30 to 49 and 64 to 96 for which the European Community had counted the volume of trade for the entire six-digit HS lines instead of counting trade for the specific products of the "ex positions" referred to under the ATC.[19] According to Colombia, if the volume of imports which did not qualify were excluded, the EC's integration programme would account for less than 16 per cent of the EC's total volume of 1990 imports.

19. The TMB considered this communication at its meetings held in March, April and May 1997, with the participation of both Colombia and the European Community. Following its detailed review, reflected in its report of the May 1997 meeting[20], the TMB reached, *inter alia*, the following overall conclusions:

- the TMB agreed with Colombia that the integration programme of the European Community for the first stage had also included certain imports which did not qualify

[16] The percentages indicated were subsequently revised as a result of corrections and revisions made in the integration programme initially notified (see paragraph 34).

[17] The percentages indicated were subsequently revised as a result of corrections and revisions made in the integration programme initially notified (see paragraph 36).

[18] Article 2.10 states, *inter alia*, that "[n]othing in this Agreement shall prevent a Member which has submitted an integration programme pursuant to paragraph 6 or 8 [of Article 2] from integrating products into GATT 1994 earlier than provided for in such a programme".

[19] The Annex to the ATC which defines its product coverage, contains all in all 14 "ex positions" or "ex HS lines" at the 6-digit level, out of which 12 such "ex HS lines" were included into the first stage integration programme notified by the European Community before the end of 1994.

[20] See G/TMB/R/29.

for integration as they did not fall under the coverage of the ATC, as defined in its Annex. The TMB was of the view, on the other hand, that the likely share of non-ATC imports and of the corresponding trade volume thus not properly integrated, was less than claimed by Colombia;

- also due to the lack of reliable statistical information, the TMB was not in a position to pronounce itself on the magnitude of the discrepancies which had occurred. It appeared, however, possible that after necessary corrections, the EC's integration programme could account for less than 16 per cent of the EC's total volume of 1990 imports. The TMB believed that the size of the shortfall, if any, could best be assessed by the importing Member itself. The TMB, therefore, recommended that the European Community re-examine its first stage integration programme in light of the TMB's comments and findings, as reflected in its detailed report.

The European Community subsequently informed the TMB that, following the TMB's recommendation, it was reviewing its integration programme and would communicate the results of this review to the TMB as soon as completed.[21]

2. Integration Pursuant to Articles 2.6 and 2.7(b), Including Notifications Made Under Article 6.1

(a) Notifications pursuant to Article 6.1

20. Article 6.1 states that "Members not maintaining restrictions falling under Article 2 shall notify the TMB ... as to whether or not they wish to retain the right to use the provisions of this Article". By the end of July 1997, 64 WTO Members submitted notifications under this provision to the TMB, several after the deadline specified by the ATC. The following 55 Members notified that they wished to retain the right to use the provisions of Article 6: Argentina; Bangladesh; Bolivia; Brazil; Burkina Faso; Colombia; Costa Rica; Côte d'Ivoire; Cyprus; Czech Republic; Dominican Republic; Ecuador; Egypt; El Salvador; Guatemala; Honduras; Hungary; India; Indonesia; Israel; Jamaica; Japan; Kenya; Korea; Lesotho; Liechtenstein; Malaysia; Malta; Mauritius; Mexico; Morocco; Myanmar; Nicaragua; Nigeria; Pakistan; Paraguay; Peru; Philippines; Poland; Romania; Saint Kitts and Nevis; Senegal; Slovak Republic; Slovenia; South Africa; Sri Lanka; Switzerland; Thailand; Trinidad and Tobago; Tunisia; Turkey; United Arab Emirates; Uruguay; Venezuela and Zambia. With respect to notifications addressed to it after the deadline had passed, the TMB stated that its taking note of late notifications was without prejudice to the legal status of such notifications.

21. The following nine WTO Members notified that they did not wish to retain the right to use the provisions of Article 6: Australia; Brunei Darussalam; Chile; Cuba; Hong Kong[22]; Iceland; Macau[23]; New Zealand and Singapore. According to Article 2.9, "Members which have notified, pursuant to paragraph 1 of Article 6, their intention not to retain the right to use the provisions of Article 6 shall, for the purposes of this Agreement, be deemed to have integrated their textiles and clothing products into GATT 1994. Such Members shall, therefore, be exempted from complying with the provisions of paragraphs 6 to 8 and 11" of the same Article.

(b) Notifications pursuant to Articles 2.6 and 2.7(b)

22. By the end of July 1997, 45 Members submitted notifications pursuant to Articles 2.6 and 2.7(b) (Argentina; Bangladesh; Bolivia; Brazil; Colombia; Costa Rica; Cyprus; Czech Republic; Dominican Republic; Egypt; El Salvador; Guatemala; Honduras; Hungary; India; Indonesia; Israel; Japan; Korea; Liechtenstein; Malaysia; Malta; Mauritius; Mexico; Morocco; Myanmar; Nicaragua;

[21] See paragraphs 31 to 35.
[22] As from 1 July 1997: Hong Kong, China (see WT/L/218).
[23] As from 20 December 1999: Macau, China (see WT/L/333).

Pakistan; Paraguay; Peru; Philippines; Poland; Romania; Saint Kitts and Nevis; Slovak Republic; Slovenia; South Africa; Sri Lanka; Switzerland; Thailand; Tunisia; Turkey; Uruguay; Venezuela and Zambia). By the date of the adoption of the first comprehensive report, the TMB had completed the review of 42 of them. In this review, the TMB noted that, in all cases the products integrated amounted to at least 16 per cent of the respective Members' total imports of the products falling under the coverage of the ATC (in most cases in volume of 1990 imports, in some other cases in value and/or with a different base-year), and that in all cases products from each of the four groups (tops and yarns, fabrics, made-up textile products, and clothing) had been integrated. The review of the notifications made by Israel, Myanmar and Saint Kitts and Nevis could not be concluded without the submission of additional information sought by the TMB from these Members.[24]

23. As noted above, the TMB in some instances took note of integration programmes which, in certain respects, did not fully meet the technical criteria established under Article 2.6. This concerned cases where the data were not available in volume, or for the year 1990, or where the share of integration was calculated relative to data for the textiles and clothing sector as a whole since data for the exact product coverage of the ATC were not available. Prior to taking note of such notifications, the TMB was assured that no better data could be obtained.

24. In its 1996 (annual) report and in the first comprehensive report, the TMB observed, *inter alia*, that out of the 55 Members which had chosen to retain the right to use the provisions of Article 6, ten Members (Burkina Faso; Côte d'Ivoire; Ecuador; Jamaica; Kenya; Lesotho; Nigeria; Senegal; Trinidad and Tobago and the United Arab Emirates) had not submitted a notification under Articles 2.6 and 2.7(b).[25] The TMB drew the attention of Members to the fact that the notification requirement contained in Article 6.1, and the resulting notification requirement contained in Articles 2.6 and 2.7(b), were mandatory and had to be submitted to the TMB within prescribed deadlines. It was also observed that the Members which had not maintained restrictions falling under Article 2 had, pursuant to Article 6.1, the obligation to notify within a specific time-frame whether or not they wished to retain the right to use the provisions of Article 6, and that a significant number of such Members had not submitted any notification under this provision. The TMB noted also that no notification on advanced or faster integration (Article 2.10) of products had been made during Stage 1 by Members having notified integration programmes under Articles 2.6 and 2.7(b).

(c) Implications of integrating products belonging to "ex HS lines" in the Annex to the ATC

25. During the review mentioned in paragraph 19 above, the TMB noted the statement of the EC's representative that several other WTO Members had included in the list of products to be integrated in the first (and second) stage(s) of implementation of the ATC products of those HS lines in the Annex for which only part of the line fell under the coverage of the ATC (indicated as "ex HS lines" in the ATC Annex). In a subsequent communication, the European Community, stressing the importance that the same principles, which had been applied in respect of the TMB's findings in the matter raised by Colombia, should be applied to other Members in the same position, requested the TMB, pursuant to Article 2.21, to review whether or not the Members which had integrated products of those HS lines in the Annex for which only part of the line fell under the coverage of the ATC had provided statistical data for the whole HS lines or only for those portions of the HS lines covered by the ATC.

26. With regard to the programmes for the first stage of integration which had already been reviewed by the TMB, the Body noted that it had not ascertained whether the statistical information provided by Members for the integrated products under these HS lines referred to the whole HS lines or only to that portion of the HS lines covered by the ATC. The TMB, therefore, decided to verify

[24] Such additional information was subsequently received only from Myanmar (see paragraphs 29 and 30).

[25] No notifications have been received from these Members since then.

with the 21 Members concerned whether the volume of imports they had notified for the "ex HS lines" (and, consequently, the data for total imports) related precisely to the products described in the Annex. At the time of the adoption of its first comprehensive report, the TMB was only able to finalize the review of one such reply that had been received in response to the questions posed by the TMB. South Africa answered that the trade counted for the "ex items" contained in its list of products integrated only pertained to those products covered by the ATC, and provided statistics to substantiate this answer.

B. DEVELOPMENTS IN RESPECT OF FIRST STAGE INTEGRATION PROGRAMMES SINCE THE ADOPTION OF THE TMB'S FIRST COMPREHENSIVE REPORT

1. Notifications Received Pursuant to Article 6.1

27. In February 1998, Haiti addressed a communication to the TMB according to which "the Haitian Government no longer applies restrictions of any kind on imports of textiles and clothing and therefore wishes to be considered to have brought this trade under the multilateral disciplines in accordance with Article 2.9". In May 2000, the TMB received a notification from Mongolia, with reference to Article 6.1, that it did not retain the right to use the provisions of Article 6. As a result, the total number of Members that specifically notified the decision of not retaining the right to use the transitional safeguard mechanism of the ATC , and thereby falling under the provisions of Article 2.9, increased to 11.

28. In August 1998, Panama notified, pursuant to Article 6.1, that it wished to avail itself of the transitional safeguard mechanism. A similar notification was made under the same Article by Latvia, in August 2000, stating that it wished to retain the right to use the transitional safeguard provided for in Article 6, and by Estonia, in April 2001, stating that it wished to retain the transitional safeguard provided for in Article 6.1.

2. Additional or New Notifications Received with Reference to Articles 2.6 and 2.7(b)

29. Panama notified its first stage integration programme in October 1998. In November 1998, Nicaragua submitted a revision of the notification made under Articles 2.6 and 2.7(b) which replaced the lists first notified in 1995, and subsequently corrected (in 1996). In January 1999, Myanmar provided an addendum to its initial notification (made in 1996), which contained information in reply to the clarifications sought by the TMB. In August 2000, Latvia submitted a notification containing the list of products integrated during Stage 1. Estonia provided a notification of its list of first stage integration in April 2001.

30. In reviewing, pursuant to Article 2.21, the notifications mentioned above, the TMB noted that in all five cases, the products integrated amounted to at least 16 per cent of the volume of the respective Members' total imports of the products falling under the coverage of the ATC (in the case of Panama, the data were based on imports in 1990; for Nicaragua, on those for 1995; while Myanmar used data for 1992-93; and Latvia as well as Estonia for 1994). The TMB also noted that, in all cases, products from each of the four groups (tops and yarns, fabrics, made-up textile products and clothing) had been included in the integration programmes. The TMB made a number of additional observations with respect to the integration programmes notified, as follows:

- as regards the products falling under "ex HS lines" included in the first stage integration programme notified by Panama, the TMB observed that even if all the imports of such "ex HS lines" were not counted in the volume of imports integrated, it would still amount to not less than 16 per cent of the total volume of Panama's 1990 imports of the products in the Annex to the ATC;

- noting the explanations by Nicaragua that 1995 trade data had been used in the revised programme, since this was the first year for which reliable data on an HS line basis were available, and since this was the only possible way for Nicaragua to provide import volume data that could be used consistently for the successive integration programmes, the TMB also observed that all the products listed in the original notification made under Articles 2.6 and 2.7(b) had been included in the revised notification;

- with respect to the fact that the calculation of the share of the products integrated had been made on the basis of data for 1992-93 by Myanmar, the TMB was informed that this was the first period for which data were available under the HS categorization system. The TMB also noted that the notification contained no "ex HS lines". The TMB further noted that two products included in the notification did not fall within the coverage of the ATC. In this respect the TMB observed that such products could not form part of an integration programme. It further observed that even if the imports of these two products were not counted, the volume of products integrated would amount to not less than 16 per cent of the volume of Myanmar's total imports in 1992-93 of the products falling under the coverage of the ATC;

- the TMB noted that the integration programme of Latvia was based on import data for 1994, as this was the first full statistical year for which data were available on the basis of the Harmonized Commodity Description and Coding System (HS). The TMB observed that the integration programme included some products belonging to those HS lines in the Annex to the ATC for which only part of the respective lines ("ex HS lines") fell under the coverage of the Agreement. The TMB further observed, however, that even if the volume of imports of the "ex HS line" products were not counted, the volume of imports of the products integrated in Stages 1 and 2, taken together, would still amount to not less than 33 per cent (i.e. the 16 per cent mentioned in Article 2.6 plus the 17 per cent mentioned in Article 2.8(a)) of the volume of Latvia's total imports in 1994 of the products falling under the coverage of the ATC[26];

- the TMB also noted that the import data included in the programme notified by Estonia were based on figures available for 1994 since, as explained by Estonia, that year represented "the first reliable statistical year based on the Harmonised System" in that country;

- with respect to notifications addressed to the TMB after the relevant deadlines, the TMB reiterated that its taking note of late notifications was without prejudice to the legal status of such notifications.

3. Implications of Integrating Products Belonging to "ex HS lines" in the Annex to the ATC and Related Matters

(a) Members referred to in Article 2.7(a)

(i) European Community

31. Following the TMB's recommendation that the European Community re-examine its first stage integration programme in the light of the TMB's comments and findings (set out in the report of

[26] This observation could be made on the grounds that Latvia simultaneously notified the first and second stage integration programmes. See also paragraph 66.

the May 1997 meeting of the Body)[27], the European Community notified, in November 1997, a corrected and revised first stage integration programme. In January 1998, at the request of the TMB, the European Community provided a detailed explanation on this corrected and revised integration programme. The TMB conducted a detailed examination of these communications during its meeting in March 1998.

32. The detailed examination of the EC's explanations and revised integration programme showed, *inter alia*, the following.

HS Chapter 39

- regarding the three ex HS numbers under Chapter 39 (ex 3921 12, ex 3921 13 and ex 3921 90: woven, knitted or non-woven fabrics coated, covered or laminated with plastics), the European Community stated that it had checked the information available to it concerning the nature and quantity of imports under the HS lines in question. The Notes of the Harmonized System for Chapters 56 and 59 expressly excluded certain textiles combined with plastics. All such products fell under Chapter 39 and were important imports as raw materials, in particular for luggage, shoes and technical products. As such, they formed the bulk of products imported under the HS lines in question. In addition, the Community had reviewed all the rulings on binding tariff information given by the relevant Community authorities in respect of these HS numbers and these rulings were representative of actual trade in the lines in question. Of 83 given, 77 related to combinations of textiles with plastics. In these circumstances the European Community had revised the amounts for imports in respect of these lines to correspond with its assessment that at least 90 per cent of the 6-digit HS lines related to textiles combined with plastics and so fell within the definition of the ATC Annex;

- the TMB observed that the re-assessment made by the European Community, which resulted in a reduction by ten per cent of the trade covered under the relevant "ex HS lines", was in line with the assessment that had been made by the representative of the European Community at the TMB meeting in May 1997. The TMB noted that the revision made by the European Community resulted from an estimate which amounted to 90 per cent of the trade of the three six-digit "ex HS lines" notified under Chapter 39 being included. The TMB observed, however, that it was not in a position to verify estimates provided by Members.

HS Chapter 42

- regarding the four ex HS numbers under Chapter 42 (ex 4202 12, ex 4202 22, ex 4202 32 and ex 4202 92: luggage, handbags and flat goods with an outer surface predominantly of textile materials), the European Community stated that it had effected a further review of the information available, including rulings in respect of binding tariff information. The products included in sub-chapter 4202 were intended to be durable. Given the nature and durability of the products in question, textiles formed an important component of these products. This was borne out by the rulings on binding tariff information given by the competent Community authorities. The European Community, on the basis of a highly conservative assessment, revised eight HS 8-digit positions in question (i.e. 4202.12.11, 4202.12.19, 4202.12.50, 4202.22.10, 4202.32.10, 4202.92.11 4202.92.15 and 4202.92.19) to include in the products counted for the purpose of integration 45 per cent of imports;

[27] See paragraphs 18 and 19.

- in considering the review made by the European Community, the TMB observed that the European Community had, based on estimates resulting in a 55 per cent reduction for eight out of the 15 eight-digit HS lines in question, reduced by about 15 per cent the volume of imports covered by the ATC under the "ex HS lines" of Chapter 42 contained in the original notification of its first stage of integration. The TMB observed, however, that it was not in a position to verify estimates provided by Members.

HS Chapter 64

- with respect to the HS line ex 6406 10 (footwear of which 50 per cent or more of the external surface area is textile material), the European Community stated that it had followed the findings of the TMB, confirming the submission by Colombia, in respect of positions 6406 10 11 and 6406 10 19, and had, therefore, excluded the totality of imports under these lines from its corrected and revised first stage of integration, leaving position 6406 10 90 (in full) corresponding with the description in the ATC Annex. As regards HS line ex 6406 99 (legwarmers and gaiters of textile material), the European Community stated that, as a result of its re-examination, it had excluded imports in respect of products under positions 6406 99 30 and 6406 99 50 which the TMB, confirming the submission by Colombia, considered not to correspond to the product description of the ATC. The European Community considered that legwarmers fell within position 6406 99 90. However, since the position was defined by reference to "other", the European Community had revised the amount of imports to 50 per cent to ensure that the amount was attributable to the factual description of the ATC Annex;

- the TMB noted that, as a result of its re-examination, the European Community had reduced by about 87 per cent the volume of imports covered by the ATC under the "ex HS lines" of Chapter 64 contained in the original notification of its first stage of integration, since the volume of imports of four out of the seven 8-digit HS lines in question had been discounted. With respect to imports of leg warmers, the TMB reiterated its observation that it was not in a position to verify estimates provided by Members.

HS Chapter 70

- with respect to HS ex 7019.10 (yarns of fibre glass), the European Community stated that, following re-examination, it had revised its first stage integration by excluding imports under position 7019 10 10, (chopped strands) in agreement with Colombia. The European Community had continued to include imports in respect of products covered by position 7019 10 51 (rovings);

- the TMB observed that, as a result of the re-examination by the European Community, the volume of imports covered by the ATC under the "ex HS lines" of Chapter 70 contained in the original notification of its first stage of integration had overall been reduced by 9.7 per cent (considering also imports under HS line 7019 20, which were not challenged by Colombia).

HS Chapter 96

- regarding the products falling under HS 9612.10, the European Community stated that in its re-examination of the volume of trade covered by the ATC under the two "ex HS lines" of Chapter 96 included in its first stage integration programme, it had followed the findings of the TMB, confirming the submission of Colombia, and

excluded imports of products under position 9612 10 10, counting only the volume of imports under position 9612 10 90;

- the TMB observed that, as a result of the re-examination by the European Community, the volume of imports covered by the ATC under the "ex HS lines" of Chapter 96 contained in the original notification of its first stage of integration had been reduced by 68 per cent, since the volume of imports of one of the two 8-digit HS lines in question had been discounted.

33. In summarizing the outcome of the re-examination by the European Community of its first stage integration programme in light of the TMB's comments and findings, the TMB noted that:

- the totality of the volume of trade covered by six 8-digit HS lines had been discounted, in agreement with the assessment made by Colombia, also on behalf of a number of other WTO Members that are also members of the ITCB;

- the totality of the trade covered by eleven 8-digit HS lines had been counted, also in agreement with the assessment made by Colombia;

- the volume of trade covered by twelve 8-digit HS lines had been reduced, *albeit* not as much as claimed by Colombia;

- the totality of the volume of trade covered by two 8-digit HS lines had been maintained. The TMB had found, in the case of one line, that the sub-position could also include ATC products; in the case of the other, it had not been able to reach a definitive conclusion as to whether the sub-position could correspond to the definition in the ATC .

34. As a result of the corrections made in trade data relating to some products, detailed in paragraph 32 above, the European Community also had to revise the figure previously provided for the volume of total imports effected in 1990 of products falling under the coverage of the ATC (by subtracting the amount which proved to be non-ATC trade). This revision reduced the total volume of 1990 imports by around 1.58 per cent. Despite this reduction, due to the fact that part of the volume of 1990 imports previously given for the relevant "ex HS lines" was also discounted, a shortfall of the magnitude of 0.97 per cent occurred (i.e. the original list of products integrated for Stage 1 amounted only to 15.03 per cent of the total volume of the 1990 imports as corrected). In order to compensate this shortfall, the European Community included four additional 6-digit HS lines in the first stage of integration by transferring them from the list notified for the Stage 2 integration programme. As a result, the revision made by the European Community showed that the volume of products integrated for Stage 1 amounted to 16.20 per cent of 1990 imports. The TMB took note of this modification and of the fact that the integration programme, as revised, met the requirements defined in Articles 2.6. It should be noted that the revision that had been made also had an effect on the share of the different product groups integrated during Stage 1.[28] Of the products integrated, 33 per cent were tops and yarns; 45 per cent were fabrics; 20 per cent made-up textile products; and 2 per cent clothing items.

35. In taking note of the communication received from the European Community, the TMB also observed that, while the approach chosen by the European Community was inherent in the TMB's own conclusions of May 1997, the revisions implemented by the Community had been based on estimates with respect to a number of ex HS positions. The TMB reiterated that it was not in a position to verify estimates provided by Members. The TMB also recalled that, as also requested by the European Community, it had decided to verify with respect to a number of other WTO Members whether the volume of imports notified in their respective integration programmes for "ex HS lines"

[28] See paragraph 15.

(and, consequently, the data for the total imports) related precisely to the products described in the Annex to the ATC. The TMB observed that a number of such Members, in their respective responses, had opted for solutions which consisted, *inter alia*, in adding products to their first stage integration programme, so that the volume of products integrated for Stage 1 would be above the requirement defined in Article 2.6 even if the volume of imports of the "ex HS lines" with statistical difficulties were to be deducted in its entirety.[29]

(ii) Norway

36. In October 1997, the TMB took note of two communications by Norway related, *inter alia*, to the notification of its first stage integration. Norway's first stage integration programme included 11 products corresponding to "ex HS lines" in the Annex to the ATC. After having re-examined the statistical information available for all products covered by the ATC at the 8-digit level, Norway had concluded that imports under one "ex HS line" should not have been counted in the basis for calculation of integration under Stage 1 as well as that of total imports in 1990 of ATC products, and that it was also possible that a second "ex HS line" should not have been counted either. In addition, imports under another "ex HS line" (which had, however, not been included in the first stage integration programme), should not have been included in the calculation of total imports in 1990 of ATC products. In the other cases, more precise import data or calculations other than those previously given could not be provided. Though Norway had accordingly revised the figure for the volume of total imports in 1990, it also considered that, in these latter cases, the given levels of 1990 imports must be said to correspond to the respective product descriptions contained in the Annex to the ATC. In a subsequent notification, noting that no WTO Member had so far contested the validity of its integration notifications, Norway confirmed that it was not possible for it to provide a breakdown of certain HS positions to the level specified in the Annex to the ATC and that in the absence of more detailed statistics it found it unreasonable and contrary to the ATC to disregard the recorded imports at the nearest aggregated level. However, in order to dispel any doubts about the fulfilment of its obligations under the ATC, regardless of the method of calculation, Norway had decided to make certain corrections and additions to its integration notifications. With respect to its first stage integration programme, Norway, while maintaining all the products originally notified, decided to include several additional products (corresponding to two HS lines at the 4-digit and one at the 6-digit level) into the list of products integrated during Stage 1 (by transferring them from the list previously notified for integration during Stage 2). As a result, the volume of the products integrated for Stage 1 amounted to 26.32 per cent of the volume of imports in 1990 of the products falling under the coverage of the Agreement (of which 10.31 per cent of the volume of 1990 imports covered imports of products falling under "ex HS lines", implying that even if the imports of all these products were not counted, the volume of imports integrated in Stage 1 would still amount to not less than 16 per cent in conformity with Article 2.6). It could also be observed that the corrections and revisions made in the list of products for integration in Stage 1 brought about some changes in the structure of the integration programme to the effect that the share of fabrics and made-up products became predominant (roughly 45 and 40 per cent, respectively), while tops and yarns represented about 14 per cent and clothing products less than 1 per cent.[30]

(iii) United States

37. The United States included altogether 6 products corresponding to "ex HS lines" in its first stage integration programme. Not only were 1990 imports of the products concerned negligible, and therefore, practically having no impact on the percentage of imports integrated, but also the detailed tariff structure applied by the United States (HTS 1990) ensured that only imports effected in the products defined in the Annex to the ATC were counted.

[29] See paragraphs 36 and 44.
[30] See paragraph 15.

(iv) *Canada*

38. The first stage integration programme of Canada included one "ex HS line" in the Annex to the ATC. Since classification under the same ex HS position had already been examined by the TMB (in the context of the review of the EC's list of integration) and, in particular, in view of the detailed specification applied by Canada (HS numbers at the 10-digit level), in this particular case, it could be ascertained that Canada's first stage integration programme did not include imports of products not falling under the coverage of the ATC. The subsequent reply provided by Canada to the TMB's request for clarification regarding imports counted with respect to products falling under "ex HS lines" and to be integrated during Stage 2 also seemed to confirm the validity of this conclusion.[31]

39. Much later, in March 2001, Canada notified that, as a result of including certain "ex HS lines" in its programme of Stage 3 integration, regarding which the volume of trade previously reported had to be revised downwards, the figure for the total imports in 1990 also had to be corrected. Consequently the products integrated during Stage 1 were reported to represent 16.7 per cent of the 1990 imports, up from 16.35 per cent.[32]

40. However, in a subsequent communication provided in May 2001, in reply to clarifications sought by the TMB with respect to Canada's Stage 3 integration programme, Canada, having made an extensive review of the data submitted by it for the purpose of integrating products under Articles 2.6, 2.8(a) and 2.8(b), informed the TMB that it had decided to withdraw from the list of products covered by the ATC and from the total volume of imports in 1990 of those products, several 10-digit tariff lines and made adjustments to the trade covered by one additional 10-digit tariff line. Since these products were part of Canada's second stage integration programme and in order to maintain the level of integration previously achieved for each of the three stages in volume terms, Canada had decided to make a number of adjustments, *inter alia*, by transferring certain products from the first to the second stage. The TMB took note of the statement of Canada that this transfer was not strictly required to reach the minimum threshold of 17 per cent stipulated in the ATC for the second stage and that Canada had chosen to transfer this volume because of its approach of maintaining the levels of integration that Canada had notified for each of the three stages. As a result of this latest correction, the products integrated by Canada during the first stage amounted to 16.36 per cent of the volume of its 1990 imports, as corrected, of the products in the Annex to the ATC.[33]

41. It has to be emphasised that the TMB's taking note of the statement of Canada was related and limited to the technical explanation provided by the Canadian authorities and did not touch upon the issue of the legal justification, or lack thereof, of transferring in 2001 certain products from the first stage of integration, implemented on 1 January1995, to the second stage, implemented three years later. Integration, in the sense of the ATC, implies that once a product is integrated it is removed from the scope of application of the ATC. Therefore, the transfer from Stage 1 to Stage 2, as suggested by Canada, cannot find justification under the ATC.

(b) Members referred to in Article 2.7(b)

42. As indicated in paragraph 25, the TMB had noted that several other WTO Members had also included in the lists of products to be integrated in the first and/or second stages, products of those HS lines in the Annex for which only part of the line fell under the coverage of the ATC. The TMB, therefore, decided to verify with the Members concerned whether the volume of imports they had notified for the "ex HS lines" related precisely to the products described in the Annex. Subsequently, in October 1997, the TMB decided to send reminders to those Members from which replies were still

[31] See paragraph 54.
[32] See paragraph 82.
[33] See paragraphs 56 and 82.

pending in relation to this particular question (whether related to the list of the first or the second stage integration programme, or both).

43. All those Members whose first stage integration programmes included products corresponding to "ex HS lines", provided replies which the TMB considered to be technically satisfactory, and which it also took note of. The only exceptions were Costa Rica and Mexico, since they only provided interim replies to which no follow-up communications were received. The list of products integrated by Saint Kitts and Nevis also contained products belonging to "ex HS lines".[34]

44. The replies provided by Members can be grouped as follows:

- a few Members (Cyprus; Czech Republic and Uruguay) were in a position to report that the import data indicated in their respective first stage integration programmes corresponded fully to the product description contained in the Annex to the ATC. The Czech Republic and Uruguay provided additional information (statistical breakdown or more detailed product description) to substantiate their statements;

- a number of Members (Brazil; Poland, Philippines and Turkey) stated that their respective programmes included, *inter alia*, import levels which did not correspond fully to the precise product description in the Annex to the ATC or that it was not possible to indicate whether or not they corresponded to the respective product description. However, even if the totality of imports under the respective "ex HS lines" were to be deducted from the total imports, the integration programmes for Stage 1 would still be within the percentage requirements defined in Article 2.6, i.e. it would still amount to not less than 16 per cent;

- one Member (Pakistan) acknowledged that its programme contained two HS lines which did not entirely fall under the coverage of the ATC. However, these two lines had not been counted in the total volume integrated;

- several Members (Hungary; Japan; Liechtenstein; Slovenia; Sri Lanka; Switzerland and Thailand) recognized that their respective integration programmes included imports which should either have not been counted or, regarding which, in the absence of any detailed statistical information, it was not possible to make an assessment on the portion of imports effected in ATC and in non-ATC products. Therefore, these Members decided to revise their integration programmes by including additional products so as to ensure that the respective programmes would amount to not less than 16 per cent of total imports even if the "ex HS lines" were not counted. In doing so, Switzerland stated that this was without prejudice to any legal interpretation which could be given to the *a posteriori* integration of the tariff lines in question in its first stage programme and that it had been done in order to respond, as practically and as constructively as possible, to the concerns of certain WTO Members and that of the TMB.

45. During its July 1997 meeting, the TMB had a broader, follow-up discussion on the matter of integrating "ex HS lines", which led to a conclusion whereby, in principle, all the Members which had notified integration programmes could be affected by technical problems resulting essentially from the non-availability of statistical information corresponding to the precise product descriptions contained in the Annex to the ATC, independently of whether or not they had included "ex HS items" in their respective integration programmes for Stage 1 (and/or Stage 2). This resulted from the fact that, in quantifying and notifying the total volume of 1990 imports, each Member concerned had to include the relevant data related to the "ex HS lines" defined in the Annex to the ATC. Therefore, the TMB decided

[34] See paragraph 22 and footnote 24.

to request that all Members which had submitted integration programmes, including those which had not as yet included "ex HS items" in such programmes, ascertain whether the statistical data counted in calculating the total volume of the Member's 1990 imports of the products in the Annex referred to the whole HS lines, or only to that portion of those HS lines which was covered by the ATC. The TMB expected that Members would report to it on the outcome of such verification. While almost all Members which had included such items in their first (or second) stage integration programmes provided replies and clarification to the TMB, no such answer was received from those Members which had not included "ex HS lines" during the first two stages. However, the TMB did not pursue this matter further, since it took the view that these latter Members would either integrate such products during Stage 3 (in which case the necessary clarification would be sought), or that they would only integrate these items in the last stage (which would not absolutely necessitate a verification of whether only trade in products covered by the ATC had been counted).

C. SECOND STAGE INTEGRATION PROGRAMMES AND THEIR IMPLEMENTATION

46. According to Article 2.8(a), "the remaining products, i.e. the products not integrated into GATT 1994 under paragraph 6 [of Article 2], shall be integrated, in terms of HS lines or categories, … as follows: on the first day of the 37th month that the WTO Agreement is in effect [i.e. on 1 January 1998], products which accounted for not less than 17 per cent of the total volume of the Member's 1990 imports of the products in the Annex. The products to be integrated by the Members shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products and clothing". In accordance with the requirements of Article 2.11, the respective integration programmes had to be notified in detail to the TMB, at least 12 months before the coming into effect (i.e. by the end of 1996) and had to be circulated by the TMB to all Members. Consequently, due to the fact that Stage 2 integration programmes were notified to the TMB during the period of the implementation of the Stage 1 integration process, the first comprehensive report of the TMB has already covered, in sufficient detail, the fulfilment of this notification obligation.[35] However, subsequent developments (corrections and revisions of previous notifications) and, in particular, any report or assessment on the actual implementation of the second stage integration programmes require that their main elements be also summarized in the present report.

1. Integration Programmes of Members Maintaining Restrictions Falling Under Article 2.1

(a) Summary of the main elements of the notifications made before the end of 1996

47. In reviewing the respective notifications, during the first half of 1997, the TMB noted that, in accordance with Article 2.8(a), the volume of products to be integrated by Canada, the European Community, Norway and the United States amounted to at least 17 per cent of the total volume of the respective Members' 1990 imports of the products falling under the coverage of the ATC. Canada reported that it would integrate 18.61 per cent[36] of the volume of its 1990 imports of the products falling under the coverage of the ATC, of which 3.5 per cent were tops and yarns, 11.3 per cent fabrics, 76.4 per cent made-up textile products and 8.8 per cent clothing products. The TMB noted that Canada would integrate 30 products, of which five were of tops and yarns, three of fabrics, 16 of made-up textile products and of six of clothing. The TMB further noted that two products (handbags of textile materials and tailored-collar shirts), with respect to which Canada maintained restrictions under the ATC, had been included in the integration programme and that, therefore, such restrictions would be eliminated on 1 January 1998. Restraints on these two products affected overall 22 WTO Members. The integration of these products would lead to the elimination of 23 specific limits. In addition, Canada had informed the TMB that, pending the integration of tailored-collar shirts into the GATT 1994 on 1 January 1998, and with effect from 1 July 1997, it would not enforce existing restrictions on imports of tailored-collar

[35] See G/L/179, paragraphs 33 to 62.
[36] The percentages indicated were subsequently revised. See paragraphs 55 and 56.

shirts from restrained WTO Members, and that the Members concerned had been informed by Canada accordingly.

48. The European Community reported its intention to integrate 17.99 per cent[37] of the total volume of its 1990 imports of the products falling under the coverage of the ATC, of which 65 per cent were tops and yarns, 12 per cent fabrics, 11 per cent made-up textiles and 12 per cent clothing products. The TMB noted that the European Community would integrate 23 EC product categories, of which four of tops and yarns, four of fabrics, six of made-up textile products and nine of clothing. The TMB further noted that 12 EC categories, with respect to which the European Community maintained restrictions under the ATC, had been included in the integration programme and that, therefore, such restrictions would be eliminated on 1 January 1998. Restraints on these 12 EC categories affected overall five WTO Members and the integration of the respective products would lead to the elimination of 14 specific limits.

49. Norway reported its intention to integrate 24.26 per cent[38] of the total volume of its 1990 imports of the products falling under the coverage of the ATC, of which 27 per cent were tops and yarns, 10 per cent fabrics, 46 per cent made-ups and 17 per cent clothing products. The TMB observed that the notification contained no product for which restrictions were then maintained by Norway. In this regard, the TMB noted the statement by Norway that it "is committed to a continuation of a policy of gradual liberalization and expects to be able to notify later in the year 1997 to the TMB (and the WTO Members directly concerned) further steps taken pursuant to Article 2, Section 15, of the ATC". The TMB noted, however, that one of the products, for which the restrictions affecting 16 WTO Members, which had been eliminated, pursuant to Article 2.15 as from 1 January 1996, would be integrated.[39]

50. The United States reported that it would integrate 17.03 per cent of the total volume of its 1990 imports of the products falling under the coverage of the ATC, of which 47 per cent were tops and yarns, 14.7 per cent fabrics, 26.7 per cent made-ups and 11.6 per cent clothing products. The TMB noted that the United States would integrate 38 US product categories in their entirety (one of fabric, three of made-ups and 34 of clothing), and 12 US product categories partially (one of yarns, six of made-ups and five of clothing). The TMB further noted that 24 US categories or parts of categories, with respect to which the United States maintained restrictions under the ATC, had been included in the integration programme and that, therefore, such restrictions would be eliminated on 1 January 1998. Restraints on these 24 US categories or part of categories affected overall 14 WTO Members. Some of the restraints which would be eliminated were in the form of specific limits (i.e. the categories themselves were under quantitative limit), while, in most cases, the category integrated was, prior to its integration, subject to a quantitative restriction because, although the category itself was not under specific limit, it fell under an aggregate or group limit. On the basis of the notifications provided by the United States pursuant to Article 2.1, the TMB could ascertain that as a result of integration three specific limits and, in addition, part of another specific limit (affecting six Members) would be eliminated.

(b) Developments that have affected the respective integration programmes since the adoption of the TMB's first comprehensive report: adjustments made in response to integrating products belonging to "ex HS lines" and related matters

51. The second stage programme of integration notified by the European Community did not include 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). However, in the context of and in conjunction with the examination of the EC's first stage integration programme, the second stage integration programme was also revised by excluding four 6-digit HS lines from the original notification.[40] The

[37] The percentages indicated were subsequently revised. See paragraph 51.
[38] The percentages indicated were subsequently revised. See paragraph 52.
[39] See paragraph 255.
[40] See also paragraph 34.

deleted HS lines corresponded to one category in the EC's categorization system of textile and clothing products (category 126: artificial staple fibres) and the imports of this product had not been subject to restrictions notified under Article 2.1. As a result of these changes and also due to the correction made in the figure related to the volume of total 1990 imports, the revised volume of imports of the products integrated for Stage 2 amounted to 17.11 per cent. This revision also led to slight modifications in the structure of the products integrated. Tops and yarns represented 62.1 per cent, fabrics 13.2 per cent, while the share of made-up textile products and clothing was 12.2 per cent and 12.5 per cent, respectively.

52. Norway's integration programme for the second stage did not contain products corresponding to "ex HS lines" in the Annex to the ATC. However, in order to dispel any doubts about the fulfilment of obligations under the ATC with respect to its first stage integration programme[41], Norway decided to transfer several products previously notified for integration in Stage 2 to the products integrated under Stage 1. The resulting shortfall in the Stage 2 integration programme was compensated by the inclusion of some additional HS lines (one at the 4-digit level and three at the 6-digit level) in the list of products integrated. These additional items (carpets of different kind and other textile floor coverings) represented 2.91 per cent of the volume of Norway's total 1990 imports. As a result, the volume of Norway's imports of the products integrated during Stage 2 amounted to 17.02 per cent of the total 1990 imports. The share of the four product groups in the list of products integrated changed as follows: 37.9 per cent of tops and yarns; 14.0 per cent of fabric; 23.4 per cent of made-up products and 24.5 per cent of clothing.

53. The United States included a number of products pertaining to the "ex HS lines" in the Annex to the ATC. However, the detailed tariff nomenclature used by the United States and the resulting precise product definitions contained therein ensured that only imports of products covered by the ATC had been counted and included in the Stage 2 integration programme.

54. Canada included 10 products falling under "ex HS lines" in the Annex to the ATC into its second stage integration programme. The share of these products in the import volume integrated was significant. In reply to the TMB's request for clarifications in this regard, Canada stated that "the level of imports included in Canada's Stage 2 integration list for the HS lines that fall outside Chapters 50 to 63 […] correspond to the product description contained in the Annex to the Agreement on Textiles and Clothing".[42]

55. In March 2001, Canada notified corrections in the calculations made for the figures of total imports in 1990 (as a result of including some "ex HS lines" in its Stage 3 integration programme). As a consequence, the percentage level for integration during Stage 2 was reported to increase to 19.0 per cent.

56. However, in a subsequent communication provided in May 2001, in reply to clarifications sought by the TMB with respect to Canada's Stage 3 integration programme, Canada, having made an extensive review of the data submitted by it for the purpose of integrating products under Articles 2.6, 2.8(a) and 2.8(b), informed the TMB that it had decided to withdraw from the list of products covered by the ATC and from the total volume of imports in 1990 of those products, several 10-digit tariff lines and made adjustments to the trade covered by one additional 10-digit tariff line. Since these products were part of Canada's second stage integration programme and in order to maintain the level of integration previously achieved for each of the three stages in volume terms, Canada had decided to make a number of adjustments, *inter alia*, by transferring certain products from the first to the second stage, and by transferring some products to be integrated for the third stage to the second stage. As a

[41] See also paragraph 36.
[42] See G/TMB/N/214/Add.1.

result of these corrections, the products integrated by Canada for the second stage amounted to 18.70 per cent of the volume of its 1990 imports, as corrected, of the products covered by the ATC.[43]

(c) Implementation of the Stage 2 integration programmes

(i) Integration implemented on 1 January 1998

57. In conformity with Article 2.8(a), the second stage of integration had to be implemented on 1 January 1998. As of that date, the imports of products included in the respective integration programmes ceased to be subject to the (special) rules of the ATC and are solely governed by the (general) rules and disciplines of GATT 1994. In conformity with the provisions of Article 2.21, the TMB is required to keep under review, *inter alia*, the implementation of the integration process. This is accomplished by reviewing any particular matter referred to it by any Member and by also relying on any relevant communication or information that can be brought to the Body's attention.

(ii) Visa requirements by the United States in respect of products integrated during Stage 2

58. In June 1998, the TMB received a communication from Hong Kong, China; India and Pakistan, jointly requesting the TMB "to review, in accordance with Articles 8.1 and 2.21 of the Agreement on Textiles and Clothing, the implementation of the Stage 2 integration programme of the United States of America with respect to the continuation of visa requirements for products included in this programme". The communication stated, *inter alia*, that such visa requirements had been "notified to the Textiles Monitoring Body as administrative arrangements under Article 2.17 of the Agreement on Textiles and Clothing. […] The measures applied pursuant to the ATC should cease to apply to products when they are integrated. If, instead, some of these measures continue to apply, it follows that the products have not been fully integrated into the GATT 1994". Since the Committee for the Implementation of Textile Agreements of the United States had announced in a notice, dated 29 September 1997, that the United States would continue to require visas for products integrated on and after 1 January 1998 before entry is permitted in the United States, it was the notifying Members' view that "in maintaining the visa requirements for integrated products, the United States of America is not fulfilling its obligations under Article 2.8(a) of the Agreement on Textiles and Clothing. Accordingly, these Members request the TMB to review the matter in terms of Article 8.1 and 2.21 of the ATC and make appropriate recommendations". Subsequently, in a letter addressed to the TMB and the three Members concerned, the United States stated that its government "[was] seriously considering the issues raised by … the representatives of Hong Kong, China; Pakistan and India". Though the communication by the United States stated that it "[would] not be in a position to respond to these issues in time [for the review scheduled by the TMB], it was the US' intention to provide a definitive response by the time of the [following] meeting of the TMB". Following this communication and in consultation with the Members involved, it was decided to postpone, by a few days, the review by the TMB.

59. Prior to the meeting of the TMB, Hong Kong, China addressed a letter to the US which was also copied to the TMB, whereas the United States informed the Body that "[…] 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". Subsequently India and Pakistan addressed letters to the United States, copied to the TMB.

60. At the start of the meeting of the TMB reviewing their communication, the representatives of Hong Kong, China; India and Pakistan communicated to the TMB the contents of a joint letter addressed by the three Governments to the Chairman of the TMB, stating that while remaining of the view "that the maintenance of visa requirement for integrated products is not consistent with obligations under Article 2.8(a) of the ATC", and "on the clear understanding that the said

[43] See paragraphs 40, 41 and 82.

United States visa requirement is to be eliminated, without conditions and as soon as practicable, but in any event not later than 31 December 1998, we agree that it is not necessary for the TMB to continue with the review under Article 2.21 of the ATC requested in our earlier letter, subject to the records of the TMB incorporating, *inter alia*, the texts of the relevant correspondence you have received relating to this review. This is without prejudice to the right of any of us to submit a further request for a similar review should this become necessary".

61. In light of the above, the TMB took note of the 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. The TMB also took note of the communication of Hong Kong, China; India and Pakistan that under the conditions contained in their letter, referred to above, they agreed that it was not necessary for the TMB to continue with the review under Article 2.21. The TMB agreed to keep in view this matter under the provisions of Article 2.21. The TMB expected that it would be informed by the United States at the time the visa requirements with respect to products integrated in Stage 2 would be eliminated.

62. In December 1998, the TMB received a communication from the United States in which the United States forwarded, for the TMB's information, a US Federal Register Notice "eliminating the visa requirements for various textile categories [as from 1 January 1999], consistent with the TMB's decision on this matter". The Members involved had been informed of this fact by the United States. The TMB took note of this communication.

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

63. In its first comprehensive report, on the basis of its detailed considerations, related, in particular, to the potential trade effects of the integration programmes implemented during Stage 1 and notified for Stage 2, and in view of the fact that the large majority of the products subject to restrictions under Article 2 will have to be integrated during a period of only 36 months (i.e. 1 January 2002 to 1 January 2005), the TMB observed that "the final objective of the integration of the textiles and clothing sector into GATT 1994 would be facilitated if the Members would, whenever possible, have recourse to the provisions of Articles 2.10 and 2.15".[44] Against this background, it also has to be noted that during the implementation of the second stage of the integration process, the TMB has not received any notification invoking the provisions of Article 2.10 from any of the Members maintaining restrictions under Article 2.1.

2. Integration Programmes of Members Retaining the Right to Use the Provisions of Article 6

(a) Integration programmes notified prior to the adoption of the TMB's first comprehensive report

64. As noted in the first comprehensive report[45], by the date of its adoption, 36 Members (Argentina, Bolivia; Brazil; Colombia; Costa Rica; Czech Republic; Dominican Republic; Egypt; El Salvador; Hungary; India; Indonesia; Japan; Korea; Liechtenstein; Malaysia; Malta; Mauritius; Mexico; Morocco; Nicaragua; Pakistan; Peru; Philippines; Poland; Romania; Saint Kitts and Nevis, Slovak Republic; Slovenia; Sri Lanka; Switzerland; Thailand; Tunisia; Turkey; Uruguay and Venezuela) notified integration programmes under Article 2.8(a). The TMB completed the review of 17 of the notifications received. In its review the TMB noted that, in all cases, the products integrated amounted to at least 17 per cent of the respective Members' total imports of the products falling under

[44] See G/L/179, paragraph 73. For developments related to Article 2.15, see paragraphs 261 to 267.
[45] See G/L/179, paragraph 45.

the coverage of the ATC (in most cases, in volume of 1990 imports, in some other cases, in value and/or with a different base-year), and that, in all cases, products from each of the four groups (tops and yarns, fabrics, made-up textile products, and clothing) had been integrated. With respect to those notifications for which the review was not completed, the TMB decided to seek further information and clarification from the Members concerned, and to revert to its review at a subsequent meeting, when satisfactory replies would have been provided.

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

(b) Developments since the adoption of the TMB's first comprehensive report

(i) New notifications received with reference to Articles 2.8(a) and 2.11

66. Nine Members provided new notifications containing their respective integration programmes for Stage 2: Bangladesh (in February 1998); Cyprus (in January and April 1998); Estonia (in April 2001); Guatemala (in September and October 1997 and in February 1998); Honduras (in December 1997 and October 1998); Latvia (in August 2000); Panama (in October 1998); Paraguay (in April and December 1998 and July 1999) and South Africa (in October 1997). In reviewing these notifications (in several cases, after additional clarification was sought from the Members concerned), the TMB noted that, in all cases, the products integrated amounted to at least 17 per cent of the respective Members' volume (for Bangladesh and Cyprus: the value) of total 1990 imports (in the case of Latvia and Estonia: for the year 1994), and that, in all cases, products from each of the four main product groups had been included in the integration programmes. The programmes notified by Honduras and Panama included some products belonging to the "ex HS lines" in the Annex to the ATC. In response to the question put by the TMB, Honduras stated that the import data provided with respect to these three items were estimates which corresponded to the precise product description contained in the Annex. As regards Panama, the TMB observed that even if all the imports of the "ex HS lines" were not counted in the volume of imports integrated, it would still amount to not less than 17 per cent of the total volume of Panama's 1990 imports of the products covered by the ATC. With respect to all the notifications listed in this paragraph, the TMB also reiterated that its taking note of late notifications was without prejudice to the legal status of such notifications.

(ii) Implications of integrating products belonging to "ex HS lines" in the Annex to the ATC

67. As indicated in the TMB's first comprehensive report[46], the TMB decided to verify with the Members concerned, prior to finalizing its review of the notifications already received pursuant to Articles 2.8(a) and 2.11, that the volume of imports they had notified for the "ex HS lines" (and, consequently, the data for total imports) related precisely to the products described in the Annex to the ATC. Practically all Members concerned provided answers and clarification in reply to the TMB's request. These answers were considered to be technically satisfactory by the TMB and the Body took note of them.

- some Members (Argentina; Colombia; Nicaragua and Uruguay) confirmed that the import levels indicated in their respective second stage integration programmes fully

[46] See G/L/179, paragraph 49.

corresponded to the product descriptions contained in the Annex to the ATC. Argentina, Colombia and Uruguay provided additional information and explanation in support of their position taken;

- one Member (Dominican Republic) also stated that the headings corresponding to "ex HS lines" related precisely to the description of these products as in the Annex. This was also confirmed by the import statistics and the tariff structure applied by the country. However, in order to avoid any confusion, the Dominican Republic decided to replace one such heading by five other tariff lines;

- several Members (Brazil; Hungary; Korea; Liechtenstein; Poland; Slovenia; Switzerland and Thailand) recognized that their respective integration programmes also included imports which did not fall under the coverage of the ATC or, regarding which it was not possible to distinguish between imports of ATC and non-ATC products. Most of these Members, with the exception of Poland and Slovenia, decided, therefore, to revise their Stage 2 lists of integration by withdrawing products corresponding to the "ex HS lines" in question and replacing them by other products, ensuring that the requirements of Article 2.8(a) in terms of products and volume of imports covered would be met in all cases. Poland did not withdraw any product from the original integration programme, but amended it by adding five tariff lines, so that even if imports in the "ex HS lines" in question were not taken into account, the amount integrated would not be less than 17 per cent. Slovenia excluded the products corresponding to "ex HS lines" from its Stage 2 integration programme, but the share of the products integrated still amounted to well above 17 per cent of the volume of imports of the products covered by the ATC.

(iii) *Completion of the review by the TMB of several notifications made pursuant to Articles 2.8(a) and 2.11*

68. The review of several Stage 2 integration programmes could not be completed by the TMB by the date of the adoption of the first comprehensive report because of the lack of replies and clarification from the Members concerned to the questions posed by the TMB which were related to different technical aspects of the respective notifications, including, if applicable, the imports counted in case of integrating "ex HS lines". Since then the necessary clarifications have been received in most cases, enabling the TMB to take note of the integration programmes notified by Argentina; Brazil; Colombia; Dominican Republic; El Salvador; Hungary; Indonesia; Korea; Liechtenstein; Nicaragua; Poland; Slovak Republic; Slovenia; Switzerland; Thailand; Tunisia; Turkey and Uruguay. In all these cases, the Stage 2 integration programmes, subsequently corrected and revised whenever applicable, met the basic requirements defined in Article 2.8(a).

69. Of the 48 Members which notified first stage integration programmes pursuant to Articles 2.6 and 2.7(b)[47], 46 provided notifications with respect to integration during Stage 2, while two Members (Myanmar and Zambia) did not. The TMB was in a position to complete the review of 43 such notifications and took note of them. With respect to the remaining three (notifications by Israel; Mexico and Saint Kitts and Nevis) the TMB will not be able take further action, unless the clarifications sought from these Members are provided.

(c) Implementation of integration during Stage 2

70. Since no communication has been received indicating the contrary, the TMB assumes that the Stage 2 integration programmes notified to it were implemented on 1 January 1998 or, in those cases when the notifications had been made after 1 January 1998, at latest on the date of the submission of

[47] See paragraphs 22 and 29.

such notifications (or, if applicable, of their revised versions of which the TMB could take note). It is noteworthy that of the Members retaining the right to use the provisions of Article 6 and complying with the obligations under Articles 2.6 and 2.7(b) as well as 2.8(a) and 2.11, three (Argentina; Colombia and Poland) invoked the provisions of the transitional safeguard mechanism during the second stage of the integration process.[48]

71. As regards advanced or earlier integration, in the sense of Article 2.10, the TMB received one notification with reference to this provision of the ATC. In December 1996, Turkey notified that it had decided to bring forward the implementation of the integration of some products[49], 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 TMB took note of this notification.

72. 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".[50]

3. Conclusions Adopted by the CTG in February 1998 in its First Major Review

73. The conclusions adopted by the CTG in February 1998 devoted much attention to the process of integration. The conclusions include, *inter alia*, the following:

> "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

[48] See paragraphs 152 to 230.

[49] Waste of synthetic fibres; corresponding to EC category 124, excluding position HS 5505.10 which was integrated in Stage 2.

[50] See G/TMB/N/240.

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.

[…]

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."[51]

4. Additional Comments and Observations of the TMB with Respect to the Implementation of Integration so Far

74. The TMB notes that the conclusions adopted by the CTG, reproduced in paragraph 73, were in line with the respective analysis provided by the TMB in its first comprehensive report. The fact that the main elements of the conclusions of the CTG appear to support the TMB's comments, observations and assessment and that, in some respects, they also appear to rely on them, indicates that in compliance with the tasks confined to the Body in Article 8.11, the first comprehensive report could provide some assistance to the Council in the context of its major review.

75. As regards the impact of integration implemented during the first and second stages by the Members that carried over restrictions from the MFA to the ATC, it is observed that the TMB provided a detailed factual assessment in paragraphs 51 to 59 (Stage 2 integration) as well as further and broader reflections in paragraphs 65 to 77 (Stages 1 and 2 taken together) in the first comprehensive report. The TMB is of the view that these assessments and reflections proved to be correct and remain valid.

76. It can also be observed that, as subsequently noted by the conclusions of the CTG, the TMB had, in its first comprehensive report[52], already drawn the attention to the importance and necessity of steady progress in terms of autonomous structural adjustment and also, as a result of this, increased competition in the Members' markets.

77. The TMB believes that it is important to reiterate some of the observations made in the first comprehensive report. The TMB had stated, *inter alia*, the following:

> "71. The ATC includes a number of particular features which should be taken into consideration in providing an overall assessment of the integration process. It is important to note in this regard:
>
> - the broad product coverage of the Annex;
> - the use of 1990 as a base-year for providing statistical information;
> - the fact that integration is implemented on the basis of total volume of imports as opposed to the respective value;
> - that Members are free to choose products/categories for integration provided that their selection meets the essential technical requirements; and
> - that, in conformity with the ATC, 67 per cent may remain to be integrated after Stage 2.
>
> 72. The notifications made pursuant to Articles 2.6 and 2.8(a) reviewed by the TMB met the requirements contained in these Articles, subject to subsequent corrections to be made, if applicable, to ensure that the volume of imports integrated corresponds fully to the product descriptions contained in the Annex of the ATC. However, up to 67 per cent of the total volume of 1990 imports may remain to be integrated during a period of only 36 months (1 January 2002 to 1 January 2005), and the large majority of the products subject to restrictions under Article 2.1 will have to be integrated during the same period.

[51] G/L/224.
[52] See G/L/179, paragraphs 74 to 77. The present report deals with this issue in paragraphs 602 to 617.

73. On the basis of considerations detailed in the preceding paragraphs, the TMB observes that the final objective of the integration of the textiles and clothing sector into the GATT 1994 would be facilitated if the Members would, whenever possible, have recourse to the provisions of Articles 2.10 and 2.15."[53]

78. Practically four years after the adoption of the first comprehensive report, the following comments can be offered in regard to the above:

- it can be confirmed that the first and second stage integration programmes of the European Community, Norway and the United States met the requirements defined in Articles 2.6 and 2.8(a). Whenever problems were encountered in ensuring that the volume of imports integrated corresponded fully to the product descriptions in the Annex to the ATC, the necessary technical corrections were made and implemented by the European Community and Norway. On the other hand, Canada's Stage 2 integration programme corresponded to the requirements specified in Article2.8(a) only after the implementation of the corrections and adjustments reported in paragraph 56 above. The TMB understood that these corrections and adjustments were related to the statistical difficulties encountered by Canada in attributing imports with respect to certain products belonging to "ex HS lines" in the Annex to the ATC. Noting the corrections and adjustments made, the TMB had difficulties in reconciling this with the statement made by Canada, in June 1997, that the respective levels of imports corresponded to the product descriptions contained in the Annex to the ATC. The TMB expresses its concern that the necessary corrections were made only after more than three years of the implementation of the Stage 2 integration.

- since the beginning of the implementation of the second stage of the integration process, no notifications have been made by Canada, the European Community, Norway and the United States with reference to Article 2.10. Thus, no further products, in addition to those included in their respective first and second stage integration programmes, have been or will be integrated by these Members prior to the implementation of the Stage 3 integration programmes. Therefore, integration in terms of scope of products will remain unchanged for four consecutive years at the level it had already reached on 1 January 1998.

D. THIRD STAGE OF INTEGRATION, TO BE IMPLEMENTED ON 1 JANUARY 2002

79. Article 2.8(b) provides that "[t]he remaining products, i.e. products not integrated into GATT 1994 [during the first and the second stages] shall be integrated, in terms of HS lines or categories, … as follows: … on the first day of 85th month that the WTO Agreement is in effect [i.e. on 1 January 2002], products which accounted for not less than 18 per cent of the total volume of Member's 1990 imports of the products in the Annex. 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 …". Following the provisions of Article 2.11, "[t]he respective programmes of integration, in pursuance of paragraph 8, shall be notified in detail to the TMB at least 12 months before their coming into effect, and circulated by the TMB to all Members". Therefore, Stage 3 integration programmes had to be notified to the TMB by the end of the year 2000.

80. In accordance with the requirements of Article 2.11, the TMB has circulated, without delay, all the notifications it has received pursuant to Articles 2.8(b) and 2.11, and has also started to review these integration programmes pursuant to Article 2.21.

[53] G/L/179.

1. Review of the Integration Programmes of Members that had Notified Restrictions Pursuant to Article 2.1

81. In reviewing the respective integration programmes, as notified and, whenever applicable, subsequently corrected and supplemented, 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 Community, Norway and the United States amounted to at least 18 per cent of the volume of the respective Members' 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. Prior to its taking note of the notifications concerned, the TMB sought clarifications and additional information with respect to a number of particular aspects of the respective integration programmes of Canada, the European Community, Norway and the United States.

82. 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 10 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, 3 categories and 2 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 seventeen other categories or sub-categories would be integrated for which restrictions would be only partially eliminated, affecting overall 27 WTO Members. With respect to the HS lines in the notification which corresponded to products described in the Annex of the ATC as "ex" positions of HS 6-digit lines, Canada, having made, upon observations made by the TMB in this regard, an extensive review of the data available and having consequently modified the list of the products to be integrated, confirmed that the trade attributed to such HS lines corresponded precisely to the product description as contained in the Annex to the ATC. Similarly, with respect to several other HS lines marked in the third stage integration programme as an "ex" position of the respective HS 10-digit line, the TMB took note of the statement by Canada that it would be integrating only that portion of the respective lines related to overalls, as indicated, and that the relevant import data had been estimated to reflect the volume of imports corresponding to the products integrated.[54] With respect to the fact that one HS line at the 10-digit level, included in the notification for Stage 3, seemed to have been already included in Canada's integration programme for Stage 1, the TMB took note of Canada's statement that the products under the relevant tariff line were being integrated by Canada in two phases (i.e. in Stage 1 and Stage 3), and that only the trade corresponding precisely to the product integrated in each Stage under the relevant HS 10-digit line had been counted. As regards a discrepancy which had been observed by the TMB between the trade data submitted by Canada at the time of the negotiation of the WTO Agreement and the data submitted by Canada for the purpose of integrating products under Articles 2.6 and 2.8, Canada, having made an extensive review of the data, withdrew from the list products covered by the ATC, and from the total volume of imports in 1990 of those products, several 10-digit tariff lines and made adjustments to the volume of trade covered by one additional 10-digit tariff line. Since these products were part of Canada's second stage of integration and in order to maintain the level of integration previously achieved for each of the three stages in volume terms,

[54] The TMB had already observed on previous occasions that it was not in a position to verify estimates provided by Members.

Canada decided (i) to transfer products from the first to the second stage, (ii) to transfer products scheduled to be integrated for the third stage to the second stage and (iii) to add products not yet integrated to the list of products to be integrated for the third stage on 1 January 2002. With respect to the transfer of products from the first to the second stage, the TMB took note of the statement by Canada that this transfer was not strictly required to reach the minimum threshold of 17 per cent stipulated under the ATC for the second stage and that Canada had chosen to transfer this volume because of its approach of maintaining the levels of integration that Canada had notified during each of the three stages (i.e. 16.35 per cent for the first stage, 18.70 per cent for the second stage and 18.16 per cent for the third stage), as opposed to simply reaching the required minimum threshold in each stage.[55] The TMB also took note of the statement by Canada that when a product or a category would be integrated that was representing 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.

83. The European Community 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 Community 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 Community 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 Community 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 Community 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. With respect to the two "ex HS lines" contained in the integration programme, the TMB noted the statement and explanation by the European Community that "the correspondence of the imports counted in respect of these lines with the relevant product descriptions was verified on the basis of the EC's Combined Nomenclature to ensure their conformity with the Annex of the ATC". (To support this statement, detailed information was provided to the TMB on the relevant sections of the Combined Nomenclature in the form of a working document.)

84. According to its notification, in accordance with Article 2.8(b), Norway would integrate 21.65 per cent of the total volume of imports into Norway 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 Norway: tops and yarns (2.73 per cent), fabrics (6.27 per cent), made-up textile products (5.09 per cent) and clothing (7.57 per cent). The TMB, being aware that all restrictions previously maintained by Norway under the ATC had been eliminated pursuant to Article 2.15, as from 1 January 2001[56], noted that the integration programme contained products falling under two product categories which had been subject to quantitative restrictions under Stage 1 or 2, affecting 16 WTO Members.

85. 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

[55] See also paragraph 40.
[56] See paragraph 264.

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 the category itself was not under specific limit, it fell under an aggregate or group limit. As regards the HS lines in the notification which corresponded to products described in the Annex of the ATC as "ex" positions of HS 6-digit lines, the TMB noted the confirmation by the United States that the trade attributed to such HS lines corresponded precisely to products covered by the ATC. With respect to the fact that several HS lines (at the 10-digit level) included in the notification had already been included in the US' integration programme for Stage 2, *albeit* with a different product description, under a different product category and with different trade data, the TMB took note of the US' statement that, in order to achieve integration of a category or part of a category, in some cases, the respective US imports in 1990, expressed in terms of HS 1990, had to be prorated using 1994 trade data. Thus, an individual 1990 HS line item could appear more than once in the integration schedule. 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 "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, 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 will be made later this year, after consultation with our bilateral textile visa arrangement partners, as to whether or not a visa requirement will 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.[57] 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".[58] Against this background, the TMB expected that it would be informed as

[57] See paragraphs 58 to 61.
[58] See paragraph 62.

soon as possible of the outcome of any follow-up considerations to be given to this matter by the United States.

2. Review of Integration Programmes of Members which had Retained the Right to Use the Provisions of Article 6

86. By the end of July 2001, of the 46 Members that had retained the right to use the provisions of Article 6 and had notified integration programmes both for Stages 1 and 2, 36 provided notifications with respect to integration programmes to be implemented during Stage 3, several of them after the expiration of the deadline foreseen in Article 2.11. Ten of the 46 Members (Bangladesh; Bolivia; Egypt; Honduras; Israel; Malaysia; Saint Kitts and Nevis; South Africa; Thailand and Venezuela) had not notified the integration programme to be implemented for Stage 3.

87. The TMB started its review of these notifications, pursuant to Article 2.21, as soon as they were received. In most cases, the TMB had to re-review these notifications on the basis of additional information and clarification that had been requested from the Members concerned. Similarly, the review of some other notifications is still pending due to the fact that the information or clarification requested have not as yet been provided by the Members. The TMB will revert to these notifications once the information requested is received. By the end of July, the TMB was, therefore, able to conclude the review of 27 such notifications.

88. 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 will henceforth be governed by the rules of GATT 1994. The TMB commended Pakistan for this decision. In the case of 26 other notifications (Argentina; Brazil; Colombia; Costa Rica; Czech Republic; Dominican Republic; Estonia; Hungary; India; Indonesia; Japan; Korea; Latvia; Liechtenstein; Malta; Mauritius; Panama; Peru; Philippines; Poland; Romania; Slovenia; Sri Lanka; Switzerland; 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 Members' 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.

89. 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 could be obtained, 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.

90. The review by the TMB of 8 notifications of Stage 3 integration programmes (Cyprus; Guatemala; Mexico; Morocco; Nicaragua; Paraguay; Slovak Republic and Tunisia) could not be completed, since fully satisfactory replies have not as yet been received from them to the specific questions raised and clarifications sought by the TMB. A reply was received from El Salvador shortly before the adoption of the present report and will be examined by the TMB at its next meeting.

91. It should be noted that in reviewing the integration programmes, listed in paragraph 88 above, in all cases where it was applicable the TMB checked, *inter alia*, that in respect of products belonging to HS lines in the Annex to the ATC for which only part of the respective line falls under the coverage of the Agreement ("ex HS lines"), the imports that had been counted and included in the respective integration programmes, corresponded to the product description in the ATC Annex. In reply to the

TMB's request for clarification in this regard, the Czech Republic confirmed that some such "ex HS lines" forming part of its integration programme corresponded precisely to the product description in the Annex, while with respect to some other such tariff positions it was difficult to determine the exact import volume to be attributed to the respective products as defined by the ATC. Consequently, the Czech Republic withdrew these latter products from the integration list and replaced them by including additional items. With respect to the Dominican Republic which included four products corresponding to "ex HS lines" in the Annex, the TMB took note of the Dominican Republic's explanation that its notification had been based on the Brussels Tariff Nomenclature (BTN) before being transposed to the HS and there were no such "ex HS lines" in the Dominican Republic's national tariff structure. Therefore, in switching from the BTN to the HS, the Dominican Republic had found that these lines in the national tariff corresponded most closely to the description in the corresponding lines of the ATC Annex. As regards Malta, the TMB observed that the integration programme contained 14 products defined as "ex HS lines". However, even if all the imports of such lines were not counted in the volume of imports to be integrated, that volume would still amount to not less than 18 per cent of the total volume of Malta's 1990 imports of the products listed in the Annex to the ATC. Latvia decided to delete the two "ex HS lines" initially included in its integration programme, because the product description provided by Latvia in respect of these products did not seem to correspond to that of the Annex to the ATC. Notwithstanding this deletion, the volume of imports to be integrated still amounted to not less than 18 per cent of total volume of imports by Latvia during the base period. With respect to Turkey, the TMB observed that the integration programme contained two products defined as "ex HS lines" in the ATC Annex and that even if all imports of such lines were not counted, the volume of imports of the products to be integrated would still amount to not less than 18 per cent of the total volume of Turkey's 1990 imports in the Annex, as envisaged in Article 2.8(b).

3. Further Assessment and Additional Observations by the TMB with Respect to the Third Stage Integration Programmes

(a) Integration programmes of Members that had notified restrictions pursuant to Article 2.1

92. Since their respective initial notifications had not contained information in this regard, the TMB decided to seek information from the Members concerned on the extent to which the quantitative restrictions maintained by them under the ATC (in the case of Norway, products covered by previously maintained restrictions[59]) would be affected by the implementation of their respective third stage integration programmes. The information received from these Members is reflected in the following paragraphs, together with further analysis and additional comments made by the TMB.

(i) Canada

93. In its replies to the TMB, Canada provided two detailed tables (as well as, subsequent corrections and additions to them). The first one listed those Canadian restraint categories, for which all products would be integrated by the start of the third stage of the integration process, together with the enumeration of those WTO Members that would be affected by the consequential elimination of these restraints (reproduced as Table 1 of the present report). The other table indicated those categories from which certain products would be integrated in the third stage, with the result that these products would be removed from the coverage of the respective remaining quantitative restrictions (reproduced, together with the subsequent adjustments, as Table 2 of the report). Canada also provided a detailed list identifying the quota categories and the corresponding 2001 tariff lines affected by the implementation of its integration programme.[60]

[59] See paragraph 84.
[60] Not reproduced in the present report. See G/TMB/N/370/Corr.3, Annex 4.

Table 1
CANADA
List of Categories and WTO Members: Product Categories Subject to Full Quota Elimination
(as notified by Canada)

Category/product	Gender/size	WTO Members
Category 4.1 Suits	Women's & girls' (k/c)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Women's & girls' (woven)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's (k/c)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's (woven)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Ensembles	*Women's & girls' (k/c)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
(*removed from restraint in 1998)	*Women's & girls' (woven)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's (k/c)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's (woven)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Category 7 (includes all of 7.1, 7.2 and 7.3)		
Woven Shirts	Men's & boys'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
(*removed from restraint in 1998)	*Children's (male)	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Woven Shirts, blouses & shirt-blouses	Women's & girls'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
(*removed from restraint in 1998)	*Children's (female)	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Woven Tops	Men's & boys'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Women's & girls'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's (male)	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's (female)	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Other woven singlets & vests (not underwear type)	Men's & boys'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Women's & girls'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's (male)	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's (female)	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.

Category/product	Gender/size	WTO Members
Category 8.1 Knit Shirts	Men's & boys'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
(*removed from restraint in 1998)	*Children's	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
Knit Shirts, blouses or shirts-blouses	*Women's & girl's	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
(*removed from restraint in 1998)	*Children's	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
Other knit singlets & vests (not underwear type)	Men's & boys'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
	Women's & girls'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
Knit Tops	Men's & boys'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
	Women's & girls'	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E.
	Children's	Bangladesh, Hong Kong/China, India, Indonesia, Korea, Macau/China, Malaysia, Pakistan, Philippines, Qatar, Romania, Singapore, South Africa, Sri Lanka, Swaziland, Thailand, U.A.E
	Men's & boys' (k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Sri Lanka, Swaziland, Thailand
Category 12 Swimwear (woven)	Men's & boys'	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Sri Lanka, Swaziland, Thailand
(Refer to Notice to Importers 391 dated May 2,1990)	Women's & girls' (k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Sri Lanka, Swaziland, Thailand
	Women's & girls' (woven)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Sri Lanka, Swaziland, Thailand
	Children's (male)(k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Sri Lanka, Swaziland, Thailand
	Children's (male) (woven)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Sri Lanka, Swaziland, Thailand
	Children's (female)(k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Sri Lanka, Swaziland, Thailand
	Children's (female) (woven)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Sri Lanka, Swaziland, Thailand

Category/product	Gender/size	WTO Members
Category 14 (includes all of 14.1, 14.2, 14.3, 14.4, 14.5, 14.6, 14.7, 14.8 and 14.9)		
Coats, snowsuits, jackets and similar articles (*removed from restraint in 1998)	*Babies'(k/c)	Bangladesh, Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	*Babies'(woven)	Bangladesh, Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Trousers, breeches, bib and brace overalls, coveralls and shorts	Babies'(k/c)	Bangladesh, Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Babies'(woven)	Bangladesh, Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Shirts, blouses and similar articles	Babies'(k/c)	Bangladesh, Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Babies(woven)	Bangladesh, Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
T-shirts and sweatshirts	Babies' (k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Dresses and skirts	Babies'(k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Babies'(woven)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Sleepwear	Babies'(k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Qatar, Romania Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Babies'(woven)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Qatar, Romania Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Underclothing	Babies'(k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Babies'(woven)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Jerseys, pullovers, cardigans and sweaters	Babies'(k/c)	Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
Other garments not elsewhere specified	Babies' (k/c)	Bangladesh, Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.
	Babies' (woven)	Bangladesh, Hong Kong/China, Indonesia, Korea, Macau/China, Malaysia, Philippines, Qatar, Singapore, Sri Lanka, Swaziland, Thailand, U.A.E.

Table 2
CANADA
List of Categories and WTO Members: Product Categories Subject to Partial Quota Elimination
(as notified by Canada)

Category/product	Gender/size	WTO Members
Categories 2 and 5.4 *Bib and brace overalls*	Men's & boys' *(k/c)*	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Lesotho, Macau/China, Malaysia, Mauritius, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Slovak Rep., South Africa, Sri Lanka, Swaziland, Thailand, Turkey, U.A.E.
(Braces and bib must be permanently attached to the trouser)	Men's & boys' (woven)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Lesotho, Macau/China, Malaysia, Mauritius, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Slovak Rep., South Africa, Sri Lanka, Swaziland, Thailand, Turkey, U.A.E.
	Women's & girls' (k/c)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Lesotho, Macau/China, Malaysia, Mauritius, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Slovak Rep., South Africa, Sri Lanka, Swaziland, Thailand, Turkey, U.A.E.
	Women's & girls' (woven)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Lesotho, Macau/China, Malaysia, Mauritius, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Slovak Rep., South Africa, Sri Lanka, Swaziland, Thailand, Turkey, U.A.E.
	Children's (male)(k/c)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Lesotho, Macau/China, Malaysia, Mauritius, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Slovak Rep., South Africa, Sri Lanka, Swaziland, Thailand, Turkey, U.A.E.
	Children's (male)(woven)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Lesotho, Macau/China, Mauritius, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Slovak Rep., South Africa, Sri Lanka, Swaziland, Thailand, Turkey, U.A.E.
	Children's (female)(k/c)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Lesotho, Macau/China, Malaysia, Mauritius, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Slovak Rep., South Africa, Sri Lanka, Swaziland, Thailand, Turkey, U.A.E.
	Children's (female)(woven)	Bangladesh, Bulgaria, Hong Kong/China, India, Indonesia, Korea, Lesotho, Macau/China, Malaysia, Mauritius, Myanmar, Nepal, Pakistan, Philippines, Qatar, Romania, Singapore, Slovak Rep., South Africa, Sri Lanka, Swaziland, Thailand, Turkey, U.A.E.
Category 22.1 *Nylon filament yarn*		Korea
Category 22.2 *Nylon staple yarn*		Korea
Category 23.1 *Polyester filament yarn*		Korea
Category 31.1 *Combed Wool Fabric*		Bulgaria, Czech Rep., India, Korea, Poland, Romania, Slovak Rep., Uruguay
Category 32.1 *Unbleached Cotton Fabric*		Hong Kong/China
Category 32.2 *Finished Cotton Fabric*		Hong Kong/China
Category 35 *Polyester Filament Fabric*		Korea, Poland
Categories 32.3, 34.2, 36.2, 37.1, 37.2 *Coated Fabrics*		Hong Kong/China, India, Poland, Korea, Thailand
Category 43.2 *Hosiery*	Babies'	Singapore, Korea, Thailand

94. On the basis of the information provided regarding the restraints to be fully eliminated, it can be observed that:

- of the product categories notified as being subject to full quota elimination, three constitute entire product categories in the Canadian system of categorization (category 7, which has 3 sub-categories – categories 7.1, 7.2 and 7.3; and categories 12 and 14), while the two remaining other items (categories 4.1 and 8.1) are, in fact, only parts of broader product categories;

- even though the listing of WTO Members affected is repeated on a number of occasions due to the detailed product specifications provided, this does not mean that specific sub-quotas or sub-limits are being applied (and would, therefore, be eliminated) on different fractions of the product categories/parts of categories in question.

95. Keeping in mind the above observations, it would appear that restraints affecting three product categories in full will be eliminated, namely:

- in category 7, affecting altogether 17 WTO Members[61];

- in category 12, affecting altogether 10 WTO Members, and

- in category 14, affecting altogether 13 WTO Members.

96. Furthermore, two parts of categories (i.e. sub-categories) will also be freed from restraints; sub-category 4.1 affecting 17 WTO Members and sub-category 8.1, also affecting 17 WTO Members. It should be also noted that as a result of "ex-quota treatment" provided by Canada from 1 January 1998[62], specific parts under categories 7 and 14, as well as under sub-categories 4.1 and 8.1 had already been removed from restraints.[63]

97. It has to be observed, however, that the above overview does not provide a precise and fully reliable picture on the number of restraints (i.e. specific limits and sub-limits) which would be fully eliminated as a result of Stage 3 integration, because the system of restraints applied by Canada is, in most cases, more complex, whereby 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 are comprised of merged product categories and sub-categories. In an attempt to better understand the implications of the Canadian integration programme, the TMB further analysed the information provided by Canada, as reflected in Table 1, by comparing the relevant information contained therein with Canada's detailed notification on the restraints maintained pursuant to Article 2.1.[64] The TMB is aware that the results of this analysis should be regarded with caution because the comparison made on the basis of technically complex notifications can bring about technical errors and cannot, perhaps, reveal certain factual elements which would be otherwise inherent in the quota system applied by Canada. This reservation notwithstanding, this examination led the TMB to conclude that the "List of Categories and WTO Members: Product Categories Subject to Full Quota Elimination", as notified by Canada in Table 1 incorporates two types of restraints, namely:

[61] It should be noted that, though listed by Canada in the information provided, Nepal is not a Member of the WTO.

[62] See paragraph 266.

[63] See Table 1.

[64] See G/TMB/N/62 and Addenda.

- specific limits and sub-limits, comprised of single or merged categories and sub-categories which will be fully eliminated, as a result of the implementation of the Stage 3 integration programme; and

- specific limits and sub-limits which will only be partially eliminated resulting from the inclusion in the integration programme of parts of categories or sub-categories subject to restraints.

98. The TMB has listed the specific limits to be fully eliminated in Table 3, while limits subject to partial elimination are detailed in Table 4.[65] In this approach, categories and sub-categories listed in Table 4 constitute an addition to the respective listing (Table 2) provided by Canada. It should be noted that Tables 3 and 4 do not include a few aggregate or group restraints which, in the view of the TMB, would also belong to the group of restraints that will be partially eliminated. They 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 will become integrated);

- group level affecting sub-categories 4.1 and 4.2 in relation to Macau, China (sub-category 4.1 will be integrated);

- group levels affecting, among others, categories 7.0 and 8.0 with respect to Macau, China (categories 7.0 and 8.1 will be 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 will be integrated).

Table 3

Specific Limits and Sub-limits, Comprised of Single or Merged Categories and Sub-categories to be 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**	Myanmar; Pakistan
7.0/8.1**	Romania; Sri Lanka*; Thailand*
7.1, 7.2/8.1**	Hong Kong, China*; Korea*
12.0	Hong Kong, China*; Qatar; Philippines; Sri Lanka; Swaziland; Thailand
14.0	Bangladesh; Hong Kong, China; Indonesia; Korea; Malaysia; Philippines; Qatar; Singapore; Sri Lanka; Swaziland; Thailand; United Arab Emirates
14.1	Philippines
14.6	Romania

*Denotes sub-limits to be fully eliminated, while a part of the respective (broader) specific limits will continue to be maintained (see also in Table 4)

**Part of the respective category/sub-categories were already removed from restraints on 1 January 1998 pursuant to Article 2.15.

[65] The TMB requested the Canadian authorities to check the content of Tables 3 and 4. While Canada had no comment with respect to Table 3, its proposed adjustments have been taken into consideration in finalizing Table 4.

Table 4

Specific Limits and Sub-limits, Comprised of Single or Merged Categories and Sub-categories to be Partially Eliminated by Canada Resulting from the Inclusion of Parts of 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 to be integrated	WTO Members Affected
3.0/4.0	4.1**	Philippines; Sri Lanka; United Arab Emirates
3.2/4.0	4.1**	Malaysia; Philippines*; Romania; Singapore
3.2/4.1, 4.2	4.1**	Bangladesh; Hong Kong, China; Pakistan
4.0	4.1**	Bulgaria; Indonesia; Korea; Swaziland; Thailand
7.0/8.0	7.0/8.1**	Hong Kong, China; Indonesia; Malaysia; Sri Lanka; Thailand
7.0/8.1, 8.4	7.0/8.1**	Bangladesh
7.0/8.1, 8.2, 8.3	7.0/8.1**	Korea; Oman; Qatar; Philippines; Singapore; South Africa; Swaziland, United Arab Emirates
8.1, 8.2, 8.3	8.1**	Pakistan
12.0/13.0	12.0	Korea

*Denotes sub-limit.

**Part of the respective category/sub-categories were already removed from restraints on 1 January 1998 pursuant to Article 2.15.

99. Based on the TMB's analysis, as reflected in Tables 3 and 4, it would appear that with the implementation of its Stage 3 integration programme Canada will fully eliminate altogether 27 specific restrictions (limits or sub-limits). In addition, a number of specific limits or sub-limits will be partially eliminated. With respect to this, it is important to note the additional clarifications provided by Canada, as follows:

- in a communication addressed to the TMB, Canada stated, *inter alia*, that "the table […], entitled 'List of Categories and WTO Members: Product Categories Subject to Partial Quota Elimination'[66] indicates those categories from which certain apparel, yarns, fabric and made-up products will be integrated in the third stage, with the result that these products will 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 will not be reduced to reflect the removal of these products from the restraint coverage".

- in a subsequent communication, further clarification was provided regarding the treatment of the restraint level for those cases where one or more categories fall under a group or combined restraint level. "For example, in some of Canada's bilateral arrangements, category 7.0 (and hence 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 identified in [Table 1 of this report] 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

[66] See Table 2 of the present report.

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".

100. In the light of the above, the TMB observed that while the restraints affecting the categories or sub-categories listed in Tables 2 and 4 would only be partially removed, the decision of Canada of not implementing any (downward) adjustment in the respective restraint levels can 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.[67]

101. Though it cannot serve as a basis for making a reliable assessment of the potential significance to trade of the integration of specific limits and sub-limits which would be fully eliminated as from 1 January 2002, information can be obtained on their respective rate of utilization during the quota year 2000 (see Table 5).[68] It has to be noted, however, that one (if not the major) limitation which is implied in such indications as a kind of snap-shot, is that it only reflects the performance realized during one specific calendar year. As a result, there is no further indication to the effect as to whether a given percentage of utilization of a given specific limit by a Member in the year 2000 can or should be mainly attributed to circumstances that prevailed only in that year or whether they can be a reflection of the continuation of a trend that was started much earlier (and, therefore, to take the extreme situations, the specific limits have been continuously and significantly under utilized, or their respective rate of utilization has been continuously very high). Another factor to be kept in mind is the varying size of each specific limit or sub-limit, in absolute terms and relative to the export potential of the respective Members.

Table 5
Canada
Utilization of the Specific Limits and Sub-limits to be fully eliminated as a Result of the Implementation of Canada's Stage 3 Integration Programme*
Year 2000

Category/Sub-category/ Merged Categories	WTO Member Affected	Rate of Utilization ** %
7.0	Myanmar	9
	Pakistan	5
7.0/8.1	Romania	2
	Sri Lanka	68
	Thailand	97
7.1, 7.2/8.1	Hong Kong, China	95
	Korea	91
12.0	Hong Kong, China	4
	Qatar	0
	Philippines	6
	Sri Lanka	24
	Swaziland	0
	Thailand	2

[67] See also paragraph 103.
[68] The TMB requested the Canadian authorities to check Table 5. The Canadian authorities responded that there were no comments with respect to Table 5.

Category/Sub-category/ Merged Categories	WTO Member Affected	Rate of Utilization ** %
14.0	Bangladesh	55
	Hong Kong, China	77
	Indonesia	47
	Korea	82
	Malaysia	40
	Philippines	18
	Qatar	0
	Singapore	9
	Sri Lanka	49
	Swaziland	0
	Thailand	95
	United Arab Emirates	30
14.1	Philippines	0
14.6	Romania	0

*Source: Department of Foreign Affairs and International Trade, Ottawa; website.
**Rate of utilization, if applicable, of the specific levels adjusted as a result of using available flexibility provisions.

102. The information regarding the utilization of the specific restraints in the year 2000 reveals very varying situations. Based on these indications, the possible impact on trade opportunities would be nil with respect to sub-categories 14.1 and 14.6, practically non-existent as regards category 7.0 and almost the same can be said in relation to category 12.0. On the other hand, the specific limit composed of sub-categories 7.1 and 7.2 and of sub-category 8.1 indicates a very high rate of utilization. Therefore, the potential significance to trade of integrating all the products falling under these sub-categories appears to be important for the two WTO Members (Hong Kong, China; Korea) affected. The integration of category 14.0 products apparently would not have any impact on the trading interests of Members having zero or very low rate of utilization (Qatar; Swaziland; Singapore; United Arab Emirates); for a group of other Members, with slightly below or above 50 per cent of utilization, the potential impact of integration cannot be assessed, whereas the significance to trade can be of some importance for Members with a relatively high rate of utilization, such as Hong Kong, China; Korea and Thailand. This also applies to Thailand as far as integration of category 7.0/8.1 products is concerned.

103. The TMB 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 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.

(ii) European Community

104. In its reply to the TMB's request for information, the European Community provided a table showing the impact of the EC's Stage 3 integration programme on the quantitative restrictions maintained under Article 2.1, together with a listing of the WTO Members affected. This table is reproduced as Table 6 in the present report. The TMB observed that the EC quota system was relatively simple and transparent, in which the specific restraints applied fully covered and corresponded to the products falling under the respective product categories. As noted earlier[69], 11 product categories, which are at present subject to restraints, would be integrated in full, affecting altogether nine WTO Members. No parts of restrictions would be integrated. Therefore, based on the indications contained in Table 6, it would appear that, as a result of the implementation of its Stage 3 integration programme, the European Community would eliminate altogether 37 specific restraints on 1 January 2002.

Table 6
Quantitative Restrictions Affected by EC Third Stage of Integration
(as notified by the European Community)

Category	Product Description	WTO Members affected
10	Gloves, mittens and mitts, knitted or crocheted	Hong Kong, China; Philippines; Korea; 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	Hong Kong, China; Macau, China; Pakistan; Korea
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	Hong Kong, China; Indonesia; Macau, China; Philippines; Korea; 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	Hong Kong, China; India; Macau, China; Korea; Thailand
27	Women's or girls' skirts, including divided skirts	Hong Kong, China; India; Macau, China; Korea
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	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	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	Korea

[69] See paragraph 83.

Category	Product Description	WTO Members affected
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	Hong Kong, China; Korea
73	Track suits of knitted or crocheted fabric, of wool, of cotton or of man-made textile fibres	Hong Kong, China; Macau, China; Philippines; Korea; Thailand

105. As observed earlier, no reliable assessment can be made of the potential significance to trade of the integration during Stage 3 of the product categories which are at present subject to restraints. Information is, however, accessible regarding the rate of utilization of these restraints during the year 2000 (see Table 7).[70] With all the limitations that such type of information imply[71], it can be observed that the spread of the rates of utilization appears to be very broad: from 1.35 per cent (category 24 - Hong Kong, China) up to above 100 per cent (category 21 – Macau, China). One would have an overall impression that these restraints were not heavily utilized in the year 2000: in 28 of the 37 specific restraints concerned, the rate of utilization remained below 50 per cent. A category by category examination would lead to a somewhat more nuanced assessment. There are a number of categories for which low utilization is shown, such as categories 18, 32, 37 and 73. In the other categories, while for some Members the rates of utilization of the restraints are relatively low, for some other Members with a higher utilization rate the same restraint could constitute an impediment to expand exports, of which some examples are category 10: Philippines 18.26 per cent – Korea 80.08 per cent; category 21: Philippines 10.81 per cent; Sri Lanka 14.99 per cent – Macau, China 103.38 per cent; Hong Kong, China 87.31 per cent.

Table 7
European Community
Quota utilization of the Categories to be Integrated in Stage 3
Year: 2000*

Category	WTO Member Affected	Quota utilization (%)
10	Hong Kong, China	38.06
	Philippines	18.26
	Korea	80.08
	Thailand	44.33
18	Hong Kong, China	12.41
	Macau, China	41.36
	Pakistan	30.51
	Korea	14.26
21	Hong Kong, China	87.31
	Indonesia	64.50
	Macau, China	103.38**
	Philippines	10.81
	Korea	29.50
	Sri Lanka	14.99
	Thailand	30.51

[70] The TMB requested the European Community to check the content of Table7. See footnote * to the table.

[71] See paragraph 101.

Category	WTO Member Affected	Quota utilization (%)
24	Hong Kong, China	1.35
	India	78.97
	Macau, China	89.91
	Korea	6.97
	Thailand	23.84
27	Hong Kong, China	12.40
	India	89.80
	Macau, China	39.91
	Korea	45.46
32	Hong Kong, China	4.34
	Korea	19.03
33	Indonesia	22.44
	Korea	42.52
36	Korea	55.41
37	Korea	36.33
68	Hong Kong, China	41.13
	Korea	52.50
73	Hong Kong, China	15.35
	Macau, China	12.11
	Philippines	13.04
	Korea	18.06
	Thailand	37.52

*Source: Commission of the European Communities; DG Trade's SIGL website. The European Community confirms that these utilisation rates reflected use on 26 June 2001. Small variations may occur thereafter, where, for example, licences notified to the Community authorities as unused are re-credited to the relevant quotas.
** Working levels following the use of flexibility provisions can be greater than 100 per cent and are shown separately in the SIGL website.

(iii) Norway

106. Though, as a result of subsequent measures notified pursuant to Article 2.15, Norway no longer maintains any restrictions under the ATC, it provided information to the TMB on the extent to which products previously subject to restraints under Article 2.1 had been or would be integrated. This information can be summarized as follows:

- the second stage integration programme included the following products which earlier, i.e. until 1 January 1996, had been subject to quantitative restrictions: products in categories 1 (jackets) and 2 (trousers) classified under HS 62.10.40 or 62.10.50. Affected Members: Czech Republic; Hong Kong, China; Hungary; India; Indonesia; Korea, Macau, China; Malaysia; Pakistan; Philippines; Poland; Romania; Singapore; Slovak Republic; Sri Lanka and Thailand;

- the third stage integration programme included the following products which during part of the two earlier stages had been subject to quantitative restrictions: products in categories 1 (jackets) and 2 (trousers) classified under HS 62.04.11, 62.04.12, 62.04.13, 62.04.19, 62.04.21, 62.04.22, 62.04.23, 62.04.29, 62.04.31, 62.04.32, 62.04.33, 62.04.39, 62.04.6109, 62.04.6209, 62.04.6309 or 62.04.6909. Affected Members: Czech Republic; Hong Kong, China; Hungary; India; Indonesia; Korea; Macau, China; Malaysia; Pakistan; Philippines; Poland; Romania; Singapore; Slovak Republic; Sri Lanka; and Thailand. These products were liberalized in three steps, i.e. 1 January 1996, 1 January 1998 or 1 January 1999.

107. By integrating these latter products during Stage 3, Norway renounced the right to invoke the provisions of the transitional safeguard mechanism with respect to them as of 1 January 2002.

(iv) United States

108. For its part, in reply to the request for clarifications by the TMB, the United States provided a chart listing the restrictions applicable to WTO Members affected by the third stage integration programme (reproduced as Table 8 of the present report). Since this chart did not specify whether, in a given category, the restraints maintained on imports from a Member were specific limits or group (aggregate) limits (or eventually both), the TMB decided to seek further information in the form of separate tables listing specific limits and WTO Members affected on the one hand, and group or aggregate limits and Members affected on the other. The United States subsequently provided this information, as requested.[72]

Table 8
Restrictions Applicable to WTO Members Affected by the US' Third Stage of Integration
(as notified by the United States)

Product Grouping	Textile Category	Brief Description	WTO Members
Apparel	331	Knit Gloves	Bahrain, Bangladesh, Brazil, Hong Kong, India, Indonesia, Jamaica, Korea, Malaysia, Pakistan, Philippines, Singapore, Sri Lanka, Thailand
Apparel	350	Robes & Dressing Gowns	Bahrain, Brazil, Haiti, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Romania, Sri Lanka, Thailand, Turkey
Apparel	359	Headwear	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Romania, Thailand
Apparel	359	Knit Neckwear	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Romania, Thailand
Apparel	359	Martial Arts Uniforms	Bahrain, Brazil, Hong Kong, India, Indonesia, Malaysia, Philippines, Romania, Thailand
Apparel	359	Shawls & Scarves	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Romania, Thailand
Apparel	359	Pantyhose & Tights	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Romania, Thailand
Apparel	431	Gloves	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Thailand
Apparel	459	Body Supporting Garments	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Thailand
Apparel	459	Knit Neckwear	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Thailand
Apparel	459	Shawls & Scarves	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Thailand
Apparel	459	Pantyhose & Tights	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Thailand
Apparel	631	Knit Gloves	Bahrain, Brazil, Hong Kong, India, Indonesia, Jamaica, Korea, Malaysia, Pakistan, Philippines, Singapore, Sri Lanka, Thailand
Apparel	649	Bra's & Body Supporting Garments	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	650	Robes & Dressing Gowns	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Sri Lanka, Thailand
Apparel	659	Knit Neckwear	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	659	Shawls & Scarves	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	659	Pantyhose & Tights	Bahrain, Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	831	Gloves	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	833	Coats and Jackets	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Romania, Thailand
Apparel	834	Coats and Jackets	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Thailand
Apparel	835	Coats and Jackets	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Romania, Sri Lanka, Thailand, UAE
Apparel	836	Dresses	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Sri Lanka, Thailand
Apparel	838	Shirts and Blouses	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Sri Lanka, Thailand

[72] See G/TMB/N/360/Add.2. Since this notification comprised of 10 pages (only the tables), and as the TMB decided to further analyse the information contained therein, this chart is not reproduced in this report.

Product Grouping	Textile Category	Brief Description	WTO Members
Apparel	840	Shirts and Blouses	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Romania, Sri Lanka, Thailand
Apparel	842	Skirts	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Sri Lanka, Thailand
Apparel	843	Suits	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	844	Suits	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	847	Trousers	Bahrain, Bangladesh, Burma, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Sri Lanka, Thailand, UAE
Apparel	850	Robes & Dressing Gowns	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Thailand
Apparel	851	Nightwear	Bahrain, Hong Kong, India, Indonesia, Korea, Macau, Malaysia, Philippines, Thailand
Apparel	858	Neckwear	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	859	Shawls & Scarves	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	859	Pantyhose & Tights	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Apparel	859	Bra's & Body Supporting Garments	Bahrain, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Fabric	222	Knit Fabric	Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Singapore
Fabric	223	Non-woven Fabric	Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines
Fabric	621	Impression Fabric	Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines
Fabric	622	Glass Fibre Fabric	Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines
Fabric	810	Silk Blend and Vegetable-fibre Fabric	
Made-ups	369	Luggage	Brazil, Hong Kong, Indonesia, Korea, Malaysia, Philippines, Romania, UAE
Made-ups	369	Bar-mops	Brazil, Hong Kong, Indonesia, Korea, Malaysia, Pakistan, Philippines, Romania, UAE
Made-ups	369	Except made-ups included in Stage 2 and pillow covers, knitted table linen, shop towels and dishcloths	Brazil, Hong Kong, Indonesia, Korea, Malaysia, Philippines, Romania, UAE
Made-ups	464	Blankets	Brazil, Hong Kong, Indonesia, Korea, Macau, Malaysia, Philippines
Made-ups	469	Except made-ups included in Stage 2 and bed linen	Brazil, Hong Kong, Indonesia, Korea, Macau, Malaysia, Philippines
Made-ups	666	Except made-ups included in Stage 2 and bed linen	Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Romania
Made-ups	669	Bags	Brazil, Hong Kong, India, Korea, Malaysia, Philippines, Thailand
Made-ups	669	Labels, sacks, tarpaulins, awnings, tents, cords, laces and needlecraft sets	Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines
Made-ups	670	Luggage	Brazil, Hong Kong, India, Korea, Malaysia, Philippines
	670	Flatgoods, handbags	Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines
Made-ups	870	Luggage	Korea
Made-ups	871	Luggage	
Yarn	600	Textured Filament Yarn	Hong Kong, India, Korea, Malaysia, Philippines
Yarn	606	Non-textured Filament Yarn	Hong Kong, India, Indonesia, Korea, Malaysia, Philippines
Yarn	607	Staple Fibre Yarn	Brazil, Hong Kong, India, Indonesia, Korea, Malaysia, Philippines, Thailand
Yarn	800	Silk Blend and Vegetable-fibre Yarn	

109. As was also the case with Canada[73], the detailed information in the charts provided by the United States did not permit the identification of those specific restraints which would be fully eliminated as a result of the implementation of the US' Stage 3 integration programme. This stemmed from the complex nature of the system of restraints maintained by the United States; in a number of

[73] See paragraph 97.

cases, the products covered by a category correspond fully to a specific restraint applied, while in an important number of 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 would be integrated, while the restraints would continue to be applied with respect to the other(s). In addition, the United States would also integrate certain parts of single categories, resulting in a partial elimination of the restrictions concerned. In an attempt to better understand the implications of the US's integration programme, the TMB further analysed the information provided by the United States, by comparing it with the detailed notifications submitted by the United States on the restraints maintained under Article 2.1.[74] As a result, with all the caution mentioned and reservations made in relation to the similar examination of the effects of the Canadian integration programme[75], the TMB came to the view that the impact of the implementation of the US's Stage 3 integration programme would result in four types of different situations, as follows:[76]

- in a number of cases, specific limits comprised of single or merged product categories would be fully eliminated (listed in Table 9);
- in several other cases, specific limits would be partially lifted, as a result of integrating certain categories from broader merged categories subject to restraints (see Table 10);
- in a few cases, specific limits would be partially eliminated because parts of the respective categories, subject to restraints, would become integrated (listed in Table 11);
- in an important number of cases, broader (aggregate or group) limits would continue to be maintained, but their product coverage would be reduced by the exclusion of the respective products which would become integrated.

Table 9
Specific Limits Comprised of Single or Merged Categories to be 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	Brazil*; Haiti; Hong Kong, China*; Korea*; Philippines; Romania; Turkey
350/650	Robes and dressing gowns	Indonesia; Malaysia; Sri Lanka
350/850	Robes and dressing gowns	Macau, China
359H	Headwear	Korea*
369D	Dishtowels	Brazil*; India; Sri Lanka; Thailand
369F	Cotton dishtowels	Pakistan
431	Gloves	Philippines
607	Staple fibre yarn	Brazil*; Korea*; Thailand
649	Bras and body supporting garments	Hong Kong, China*; Philippines
650	Robes and dressing gowns	Hong Kong, China*; Korea*; Philippines
669	Bags	Brazil*; Korea*; Thailand
834	Coats and jackets	Hong Kong, China*
835	Coats and jackets	Hong Kong, China*; Korea*; Malaysia**
836	Dresses	Hong Kong, China*

[74] See G/TMB/N/63 and Addenda.
[75] See paragraph 97.
[76] The TMB requested the United States to check the content of Tables 9, 10 and 11. No answer was received from the United States.

Category/Merged Categories Subject to Restraint	Brief Product Description	WTO Members Affected
840	Shirts and blouses	Hong Kong, China*; Sri Lanka
842	Skirts	Hong Kong, China*
847	Trousers	Bangladesh; Hong Kong, China*; Indonesia; Philippines; United Arab Emirates

*Broader (aggregate or group) limits will continue to be applied for products not to be integrated.
**Denotes a sub-limit.

110. It was the TMB's view that providing a listing of the products falling under the last category (aggregate or group limits) would not bring about much more clarity, therefore, it refrained from including such a chart in the report. It noted, however that:

- while, in several cases, the products to be integrated fell, at the same time, both under specific limits and aggregate or group limits;

- in a number of other cases, only aggregate or group limits affected the respective products which would be integrated during Stage 3.

111. On the basis of the analysis made by the TMB, it would appear that altogether 43 specific limits would be fully eliminated by the United States on 1 January 2002, as a result of the implementation of its Stage 3 integration programme (see Table 9).

Table 10
Specific Limits to be Partially Eliminated by the United States Resulting from the Inclusion in the Stage 3 Integration Programme of Certain Categories from Broader Merged Categories Subject to Restraints

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

*Also subject to aggregate or group limits.

Table 11
Specific Limits to be Partially Eliminated by the United States Resulting from the Inclusion in the Stage 3 Integration Programme of Parts of Categories Subject to Restraints

Category Subject to Restraint	Part of the Respective Category to be Integrated (brief product description)	WTO Members Affected
331	Cotton gloves (only knitted)	Bangladesh; 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	[Cotton] dishtowels, luggage, knitted table linen, shop towels and dish cloths	Pakistan; Romania; United Arab Emirates
631	Man-made fibre gloves (only knitted)	Hong Kong, China*; Indonesia; Jamaica; Korea*; Malaysia; Pakistan; Philippines; Singapore; Sri Lanka; Thailand*
666	Furnishings, except bed sheets, pillow cases and certain linen	Romania

*Also subject to aggregate or group limits.

112. In view of the relatively significant number of products under restrictions which would be subject to partial integration (as reflected in Tables 10 and 11, as well as in the number of group or aggregate limits), it is of particular relevance to get indications on the extent to which the levels of the respective remaining restraints would be affected as a result of integration of well specified parts of their present product coverage. As indicated earlier[77], in reply to the question posed by the TMB in this regard, the United States stated that it "[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 will be based on trade that [had] 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".

113. As was the case with Canada and the European Community, information could also be obtained on the rate of utilization in the year 2000 of those specific limits which would be completely phased out by the United States as a result of the implementation of its Stage 3 integration programme. This information is contained in Table 12[78] of the present report. Keeping again in mind the reservations made and the limitations already referred to earlier[79], a brief examination of this table would indicate that the spread of the respective rates of utilization was wide, ranging from 0 per cent up to 100 per cent. In a few instances (category 607: Brazil and Korea; category 835: Malaysia) no imports took place at all; in some other categories the utilization was very low (e.g. category 222); while in some other categories low utilization by some Members is opposed to high rates of utilization by others (for example, category 350: Romania 4.0 per cent – Philippines 87.5 per cent; category 369D; Sri Lanka 14.6 per cent – India: 85.5 per cent; category 669-P: Korea 4.1 per cent – Thailand 75.7 per cent; category 847: Philippines 20.3 per cent – Bangladesh: 100.0 per cent). Out of the 43 specific limits, in 21 cases the utilization was below 50 per cent; in 13 cases between 50 to 75 per cent; in 8 cases above 75 per cent (in one case no indication could be obtained).

[77] See paragraph 85.

[78] The TMB requested the United States to check the content of Table 12. No answer was received from the United States.

[79] See paragraph 101.

Table 12
Rate of Utilization of the Specific Limits to be Fully Eliminated by the United States as a Result of the Implementation of its Stage 3 Integration Programme Year 2000*

Category/Merged Categories Subject to Restraint	Brief Product Description	WTO Member Affected	Quota Utilization
222	Knit fabric	Singapore	13.5
350	Robes and dressing gowns	Brazil	34.5
		Haiti	n.a
		Hong Kong, China	78.3
		Korea	67.9
		Philippines	87.5
		Romania	4.0
		Turkey	96.5
350/650	Robes and dressing gowns	Indonesia	71.3
		Malaysia	42.0
		Sri Lanka	82.9
350/850	Robes and dressing gowns	Macau, China	59.9
359-H	Headwear	Korea	27.6
369-D	Dishtowels	Brazil	32.5
		India	85.5
		Sri Lanka	14.6
		Thailand	65.0
369-F	Cotton dishtowels	Pakistan	70.4
431	Gloves	Philippines	18.1
607	Staple fibre yarn	Brazil	0.0
		Korea	0.0
		Thailand	20.4
649	Bras and body supporting garments	Hong Kong, China	69.0
		Philippines	35.8
650	Robes and dressing gowns	Hong Kong, China	48.1
		Korea	67.4
		Philippines	92.5
669-P	Bags	Brazil	12.1
		Korea	4.1
		Thailand	75.7
834	Coats and jackets	Hong Kong, China	14.3
835	Coats and jackets	Hong Kong, China	50.3
		Korea	24.2
		Malaysia	0.0
836	Dresses	Hong Kong, China	58.0
840	Shirts and blouses	Hong Kong, China	68.7
		Sri Lanka	61.2
842	Skirts	Hong Kong, China	12.7
847	Trousers	Bangladesh	100.0
		Hong Kong, China	57.9
		Indonesia	64.9
		Philippines	20.3
		United Arab Emirates	25.3

*Source: US Customs website – Quota information, Textiles Status report dated 31.12.2000.

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

114. As explained earlier, integration programmes of Members, other than those which took over restraints from the pre-ATC regime, 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 narrow 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. Without trying to provide a detailed analysis of the individual integration programmes (which are very much different in most respects), one would observe that essentially two basic approaches were followed by the Members concerned and that 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 apparently preferred 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 main reason for adopting this latter approach could be 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 main difference between these two basic approaches, in terms of their potential impact for the period covered by the third stage of the integration process, is that, in the first case, the universe of products that can be subject to measures under Article 6 is still extremely 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 limited and sparing use of the transitional safeguard mechanism by most of these Members, up to now, would indicate that this difference in the potential impact is more theoretical than real.

III. APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM

115. This Chapter describes all the developments which followed each of the requests for consultation made by Members pursuant to Article 6 of the ATC since the TMB's adoption of the first comprehensive report, i.e. as from 25 July 1997. Actions pursuant to Article 8 or within the broader WTO framework such as the Dispute Settlement Understanding (DSU), which might have followed Article 6 actions, are also included in the overview provided below.

116. Article 6 of the ATC provides for the possibility of applying transitional safeguard measures on imports of products covered by the ATC and not yet integrated into GATT 1994 that cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Article 6.1 specifies that the transitional safeguard should be applied as sparingly as possible, consistently with the provisions of Article 6 and the effective implementation of the integration process under the ATC. According to Article 6.7, "the Member proposing to take safeguard action shall seek consultations with the Member or Members which would be affected by such action". Such consultations may result, if no agreement is reached, in a restraint measure being applied unilaterally by the importing Member under Article 6.10, or in a restraint measure being agreed between the parties and notified under Article 6.9. 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 "the TMB shall determine whether the agreement is justified in accordance with the provisions of this

Article ... The TMB may make such recommendations as it deems appropriate to the Members concerned". In addition, Article 6.11 provides that "in highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10 may be taken provisionally on the condition that the request for consultations and notification to the TMB shall be effected within no more than five working days after taking the action". In such cases, if consultations do not produce agreement, the TMB shall promptly conduct an examination of the matter, and make appropriate recommendations to the Members concerned within 30 days of the notification of the conclusion of consultations. If consultations do produce agreement, such agreement shall be notified to the TMB by the Members concerned, to which the TMB may make such recommendations as it deems appropriate.

117. 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.

118. 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".

A. THE APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM DURING THE PERIOD COVERED BY THE TMB'S FIRST COMPREHENSIVE REPORT: A BRIEF OVERVIEW

119. During this period (i.e. from 1 January 1995 to 24 July 1997), the TMB received notification of 33 requests for consultation pursuant to Article 6, comprising 26 by the United States under Article 6.7 and seven by Brazil under Article 6.11. Of the 26 requests made by the United States, 24 were made in 1995 (on products imported from Brazil; Colombia; Costa Rica; Dominican Republic; El Salvador; Guatemala; Honduras; Hong Kong; India; Jamaica; Philippines; Sri Lanka; Thailand and Turkey), one in 1996 (*vis-a-vis* El Salvador) and one in 1997 (on products imported from Pakistan). Twelve resulted in restraint measures being agreed either during the consultation period, prior to, or during the review of the measure by the TMB (in addition, one restraint measure was agreed after the TMB had completed its review of the action pursuant to Article 6.10). In two cases, the United States eventually decided not to apply a safeguard measure. Five unilaterally applied measures were dropped by the United States before their review by the TMB, and an additional one during the review. The TMB, therefore, completed the review of seven safeguard measures applied under Article 6.10 by the United States. In three of the seven measures, the Members affected by the application of the restraints subsequently requested the establishment of dispute settlement panels. The Dispute Settlement Body (DSB) established the panels pursuant to these requests. In two cases, the reports of the panels and the related reports of the Appellate Body were adopted by the DSB,

while in the third case, the importing Member decided to remove the restraint, and the complainant requested the termination of the panel proceedings. As to the restraints agreed between the United States and the Members concerned, the United States rescinded three restraints before their review scheduled by the TMB. Thus, the TMB reviewed ten agreed restraints notified pursuant to Article 6.9.[80]

120. Brazil made seven requests for consultation under Article 6.7, in June 1997, with respect to imports of six product categories (two requests on imports from Hong Kong, five on imports from Korea), at the same time introducing provisional safeguard measures pursuant to Article 6.11. Brazil and Korea reached an agreement on the measures introduced by Brazil. The agreement related to all five product categories in question and was reviewed by the TMB. The TMB also completed its review of the two remaining unilateral measures introduced by Brazil on imports from Hong Kong.[81]

121. In addition, the TMB considered a notification by Korea of safeguard measures applied by Ecuador with reference, *inter alia*, to the provisions of Article 6 against imports from Korea and Hong Kong.[82]

B. APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM DURING THE SECOND STAGE OF THE INTEGRATION PROCESS[83] INCLUDING RELATED DEVELOPMENTS IN THE DSB

122. During the second stage, the TMB received notification of 29 requests for consultations pursuant to Article 6.7 or 6.11, ten in 1998, 18 in 1999 and one in 2001. No such recourse was made in 2000.

123. The United States made one request for consultation, pursuant to Article 6.7, during the second stage of integration, in 1998. This request related to certain products imported from Pakistan and resulted in the unilateral application of a safeguard action pursuant to Article 6.10, which the TMB reviewed under that provision, and, subsequently, also pursuant to Article 8.10. In addition, a request made by the United States during Stage 1 (in August 1997) is included below since it could not be dealt with in the Body's first comprehensive report. This request for consultation was made on certain products imported from Thailand and resulted in the introduction of a restraint measure agreed between the United States and Thailand pursuant to the provisions of Article 6.9. The TMB reviewed this agreed restraint measure pursuant to that provision.

124. Colombia made nine requests for consultation, pursuant to Article 6.7, in 1998, on imports of denim fabric from Brazil; Chile; India; Peru and Venezuela and on imports of plain polyester filaments from Korea, Malaysia, Thailand and the United States. In five cases, Colombia decided not to introduce a safeguard measure; whereas, in four cases, it introduced safeguard measures unilaterally, which the TMB reviewed in accordance with the provisions of Article 6.10.

125. Poland made one request for consultation pursuant to Article 6.7, in 1999, on certain products imported from Korea but eventually decided not to apply a safeguard measure. In April 2001, Poland requested consultations under the same Article on certain products imported from Romania.

126. Argentina made four requests for consultations pursuant to Article 6.7, in 1999, on imports of products from Indonesia, Korea (two products) and Malaysia. In those four cases, Argentina decided not to apply a safeguard measure. In addition, Argentina had recourse in 13 instances, in 1999, to the provisions of Article 6.11 (referring to highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair), introducing safeguard measures provisionally on

[80] See G/L/179, paragraphs 89 to 146.
[81] See G/L/179, paragraphs 147 to 165.
[82] See G/L/179, paragraphs 166 to 170.
[83] Including all requests for consultations made pursuant to Article 6.7 since the adoption of the TMB's first comprehensive report.

certain imports from Korea (3 products), Brazil (5 products) and Pakistan (5 products), at the same time as requesting consultations with the respective Members and notifying the TMB of its actions. The TMB, therefore, completed the review of these 13 safeguard measures.

1. Application by the United States

(a) Imports of artificial staple fibre yarn (US category 603) from Thailand

127. At the end of August 1997, the United States requested consultations with Thailand pursuant to Article 6.7. Consultations produced agreement that the situation called for a restraint, for a three-year period, on imports of yarn for sale, 85 per cent or more by weight artificial staple fibre (US category 603) from Thailand. The agreed restraint was notified by the United States pursuant to Article 6.9, which the TMB reviewed at its meeting in April 1998.

128. While examining the specific and relevant factual information made available, pursuant to Article 6.7, by the United States to Thailand at the time it had requested consultations, the TMB observed that considerable efforts had been made by the United States to match the data as closely as possible to the requirements of Articles 6.2, 6.3 and 6.4. With regard to the definition of the domestic industry producing like and/or directly competitive products, however, the TMB observed that yarn 85 per cent or more by weight artificial staple fibre was produced in the United States both by the domestic industry producing yarn for sale and by vertically integrated firms engaged in the production of fabric for which this yarn was an input. In the relevant factual information, provided pursuant to Article 6.7, the United States had not given information on those vertically integrated firms.

129. The TMB sought additional information from the United States on the extent to which the vertically integrated firms that produce artificial staple fibre yarn internally, for their own consumption, also bought or sold such yarn on the commercial market during the period under consideration. The TMB also sought information on the relative sizes of the vertically integrated sector and of the sector that produced yarn for sale. The United States responded that since integrated mills had tried to balance their production as closely as possible at each stage of the production process, it was estimated that less than 5 per cent of the integrated sector's yarn consumption was purchased from the "for sale" market. Vertically integrated companies produced yarn that was consumed internally and made into fabric; the fabric, not the yarn, was what these companies sold. As to the relative sizes of the two sectors, the TMB noted that, according to the United States, production of category 603 yarn for sale had amounted to 58.1 million pounds in 1996, while integrated mills had produced and consumed 78.4 million pounds of artificial staple fibre yarn.

130. The TMB observed, on the one hand, that Article 6 gave the possibility to provide safeguard to an industry, and not to part of an industry, producing a particular product, and that the artificial staple yarn produced by both the "yarn for sale" producers and by the vertically integrated firms could be substitutable. On the other hand, the TMB noted that, in this particular case, the yarn produced by the vertically integrated firms was not sold in the "yarn for sale" market in competition with the yarn produced by the "yarn for sale" producers. Instead, the vertically integrated firms produced yarn for their own use only, and also purchased a small amount of yarn from the "for sale" market.

131. As far as the imports of products of category 603 were concerned, the TMB noted that they were substitutable for both the artificial staple yarn produced by the "yarn for sale" producers and for that produced by the vertically integrated firms. The TMB further noted that the status of competition between the imports of category 603 products and the yarns produced by the two domestic sources, in particular the extent to which imports could affect purchases of the vertically integrated firms, could not be accurately assessed, owing to the lack of data that would show trends over a period of time. However, the TMB observed that the vertically integrated firms did not sell the yarn they produced on the domestic market, and it could be contended that their production did not compete directly with imports on the US' "yarn for sale" market. The TMB also noted that category 603, defined as yarn for

sale, 85 per cent or more by weight artificial staple fibre, had not been constructed specifically in the context of this request for consultation but had been part of the US categorization system for many years. Based on information presented to the TMB, the Body understood that the segment of the industry represented by the vertically integrated firms was relatively stable and independent of developments in the "yarn for sale" market. Any evidence of serious damage caused by imports would, therefore, reflect essentially the situation in the domestic industry producing yarn for sale, 85 per cent or more by weight artificial staple fibre.

132. The TMB observed that the volume of imports into the United States from all sources of category 603 products had increased in 1996, and had continued to increase in the first half of 1997, *albeit* at a slower pace. With respect to certain of the economic variables mentioned in Article 6.3, the TMB observed that their evolution from 1995 to the first quarter of 1997, such as the declining domestic production of artificial staple yarn for sale, the reduction in the share of the market held by domestic manufacturers of yarn for sale, the decrease in employment and in capacity utilization, the inventory build-up and the pressure put on domestic prices by import prices, indicated that the US industry producing yarn for sale, 85 per cent or more by weight artificial staple fibre was experiencing problems as a result of increased imports. On the other hand, some other economic variables, in particular, the evolution of average wages per worker and the increase in productivity could point in a different direction. The TMB, while noting that none of these factors, either alone or combined with other factors, could necessarily give decisive guidance, and that, according to the specific and relevant factual information made available pursuant to Article 6.7 by the United States, the damage could not be attributed to such other factors as technological changes or changes in consumer preference, concluded that, taking into account all the elements mentioned above, the circumstances described in Article 6.2 had been observed in the United States market for imports of yarn for sale, 85 per cent or more by weight artificial staple fibre.

133. The TMB further observed that imports of category 603 products into the United States from Thailand had increased significantly in 1996, and had continued to increase in the first half of 1997, so that Thailand had become the second largest supplier to the United States market. This had taken place in the context of increased imports from several other sources, both restrained and unrestrained, whose share of overall imports was smaller than that of Thailand, and of declining imports from the main supplier to the US market, whose imports were not subject to restriction. Thailand's exports were, on average, priced significantly below the US average domestic price, and below the average price of imports. The TMB, therefore, considered that the circumstances described in Article 6.2 could be attributed, *inter alia*, to increased imports from Thailand.

134. The TMB noted that the total level of the agreed restraint was substantially above the level envisaged in Article 6.8 (the rollback level) and that the growth provided amounted to 6 per cent per annum.

135. On the basis of the considerations mentioned above, the TMB concluded that this restraint measure agreed between the United States and Thailand was justified in accordance with the provisions of Article 6.

(b) Imports of combed cotton yarn (US category 301) from Pakistan

136. In December 1998, the United States requested consultations with Pakistan, pursuant to Article 6.7, with respect to imports of products of US category 301 (combed cotton yarn for sale) from Pakistan. As the consultations did not produce agreement, the United States decided to take a safeguard action on these imports, under Article 6.10, with effect as from March 1999, and notified the TMB of this decision.

137. The TMB examined this safeguard measure at its April 1999 meeting with the participation of representatives of both parties. During this review, the TMB noted, *inter alia*, that the particular

product subject to the safeguard measure introduced by the United States was combed cotton yarn identified as US category 301. It observed, furthermore, that in terms of its characteristics any combed cotton yarn was identical, i.e. alike in all respects, including common end-uses, with respect to the particular product subject to the safeguard measure in question. The United States had defined the domestic industry producing products like and/or directly competitive with imports of combed cotton yarn (category 301), as the US industry segment that produced spun yarn for sale, chief weight combed cotton defined as category 301, sold to other firms for use in the manufacture of fabric and finished textile products. It followed from this that the United States had provided information regarding all the economic variables referred to in Article 6.3 with respect to that segment of the industry. As regards the other segment of the US industry producing cotton spun yarn, chief weight combed cotton, the United States had explained that this segment had been composed of vertically integrated firms whose yarn did not ordinarily enter normal channels of trade and did not compete with yarn produced for sale in the open market. The TMB noted that the United States had provided arguments why, in its view, the combed cotton yarn production of the vertically integrated mills should be excluded from the scope of the investigation and, by extension, why it had not provided data pursuant to Article 6.3 with respect to this segment of production. The TMB observed, however, that it would ordinarily be up to the Body, on the basis of the detailed information provided pursuant to Article 6.7, to determine whether it was justified to exclude a particular segment of production. Therefore, the TMB would have expected to receive, to the extent practicable, sufficient information to allow it to do so. In the view of the TMB, these issues limited its ability to reach an appropriate conclusion regarding the determination of whether or not the US' domestic industry producing like products and/or products directly competitive with combed cotton yarn (category 301) was experiencing serious damage or actual threat thereof, as required under Article 6.3.

138. Without prejudice to the above, the TMB decided to proceed to the detailed examination of the factual information related to the yarn for sale segment of the domestic production. The TMB noted in this regard that the United States had provided data on the economic variables, specified in Article 6.3, on a comparable basis, respectively, for 1996, 1997, and for the periods January-August 1997 and January-August 1998. The Body analysed in detail the data and information provided with respect to production, inventories, domestic sales, market share, capacity utilization, employment, wages, productivity, profitability and investments, together with the arguments presented by the representatives of Pakistan and the United States.

139. In making an assessment of its examination of the safeguard action introduced by the United States, including the determination of serious damage, or actual threat thereof and its causes, the TMB based itself essentially on the information which had been made available by the United States pursuant to Article 6.7. The TMB noted that the United States had chosen to exclude from its definition of the domestic industry producing products like and/or directly competitive with combed cotton yarn (category 301), a segment of its domestic industry producing such yarn essentially for its own internal consumption. This segment represented about one-third of the total US production of combed cotton yarn. As a consequence, the United States had provided information pursuant to Article 6.3 only with respect to that particular segment of the industry which produced combed cotton yarn for sale, excluding information that pertained to the evolution of that part of the industry that produced combed cotton yarn essentially for its own consumption. The TMB was not, in this particular case, in a position to assess whether or not, on the basis of the information provided, the domestic industry producing like and/or directly competitive products had been correctly identified by the United States.

140. The TMB further noted that the information provided by the United States on its domestic industry had been on an eight-month basis. It observed that this in itself hampered the Body's task of assessing whether or not serious damage, or actual threat thereof, had been demonstrated, particularly in view of the fact that a longer period might better reflect all the factors that could have had an effect on the evolution of the data. The TMB also noted that some aspects concerning the developments in and the state of the US domestic industry had remained unclear (such as the evolution of employment,

the closure of plants, investment and the restructuring that could have taken place in the domestic cotton yarn industry), which the discussion that had taken place during the TMB's consideration of the matter, in particular the cause of the change in the industry, had revealed

141. The TMB, therefore, considered that in view of the serious limitations mentioned above, it was not in a position to assess without doubt whether or not serious damage had been caused to the US' industry producing products like and/or directly competitive with combed cotton yarn by increased imports of combed cotton yarn. Consequently, in the view of the TMB, the United States had not demonstrated successfully that combed cotton yarn was being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to its domestic industry producing like and/or directly competitive products. The TMB, recommended, therefore, that the measure introduced by the United States on imports of combed cotton yarn from Pakistan should be rescinded.

142. Subsequently, in May 1999, the TMB received a communication from the United States under Article 8.10 in which the United States conveyed its inability to conform with the recommendation made by the TMB and requested that the TMB reconsider its recommendation that the measure on imports of combed cotton yarn from Pakistan be rescinded. At the invitation of the TMB, Pakistan sent a delegation to participate in the TMB's review, whereas the United States chose not to be represented.

143. In conducting a thorough examination of the reasons presented by the United States for its inability to conform to the TMB's recommendations, the TMB addressed one-by-one the arguments made by the United States. As regards the definition of the domestic industry producing like and/or directly competitive products, the TMB examined, *inter alia*, the basic differences between the approach adopted by the United States and that adopted by the TMB. The United States had claimed that, in view of the lack of "direct competitiveness" between the two segments of the industry, the vertically integrated segment should be excluded from the definition of the domestic industry and, therefore, from the investigation conducted under Article 6 without the necessity to provide specific information on the economic variables, pursuant to Article 6.7, regarding the vertically integrated firms. The TMB, on the other hand, guided by the fact that the domestic industry producing combed cotton yarn encompassed two segments (i.e. that of the "for sale" companies as well as that of the vertically integrated firms), had held the view that:

- information reflecting the status of the vertically integrated firms should also have been provided by the United States, to the extent practicable, regarding the economic variables defined in Article 6.3; and

- on the basis of this information, the TMB could have determined whether, for the purpose of the particular investigation, it was justified, or not, to exclude this segment of the production from the scope of the domestic industry producing like and/or directly competitive products for which serious damage, or actual threat thereof, as a result of increased imports, had been claimed.

144. The TMB next examined the arguments that the United States had raised in its communication in order to justify that the vertically integrated firms should be excluded from the definition of the domestic industry producing like and/or directly competitive products. In essence, the United States stated that this exclusion had been justified:

- on the grounds of interpreting the relevant provisions of the ATC;

- on the basis of the facts involved in the case;

- since the United States had provided information regarding the integrated mills which was relevant to the TMB's understanding of such mills and the distinction between the yarn for sale industry and the integrated mills;

- as the US textile category system established in 1974 - which had never previously been challenged – was designed to reflect industry definitions.

The United States also observed that, in a previous case, an identical analysis of industry definition had been performed to determine the existence of serious damage, or actual threat thereof, and the TMB had found that the measure was justified in accordance with the provisions of Article 6.

145. As to the legal arguments raised by the United States, the TMB observed, among others, that the ATC did not provide a definition of what constitutes the domestic industry producing like and/or directly competitive products. It could be observed, however, that whether or not combed cotton yarn was sold or further processed within a vertically integrated company would not affect the product characteristics of such combed cotton yarn. Indeed, combed cotton yarn produced by vertically integrated plants bore the same physical characteristics as combed cotton yarn produced for sale, therefore, in the view of the TMB, the two products could be considered as "like" products. The fact that the United States acknowledged that a small proportion of the combed cotton yarn produced by vertically integrated mills was actually sold, confirmed that the further use of combed cotton yarn did not affect the nature of the product as such. Furthermore, the factual arguments made by the United States did not provide, in the view of the TMB, additional information compared to what had already been available pursuant to Article 6.7. Concerning the information provided on the integrated mills, the TMB recalled that the actual data provided by the United States, in the sense of Article 6.3, had been limited to the volume of combed cotton yarn produced by these mills in 1996 and 1997. No data on output had been provided for these firms related to the period of January-August 1998, which was the period during which, as claimed by the United States, the alleged serious damage or actual threat thereof had occurred to the domestic industry. Therefore, even with respect to this one economic variable for which some information had been provided, the TMB had not been placed in a position to check what the developments had been during the first eight months of 1998, a period that had been decisive in the US' determination of serious damage or actual threat thereof. Furthermore, no information had been presented regarding the ten other economic variables listed in Article 6.3 with respect to the integrated mills. In the view of the TMB, the reference to the US textile category system did not seem to have much relevance in the context of the examination of the measure at hand. The stated congruence of the US category system with industry definitions had, indeed, never been challenged by the TMB. It had never previously been argued either by the United States that its category system was designed to reflect industry definitions. In this context, the TMB considered that the US categories as notified under the ATC related to products defined by HS lines and not to industries as such. Finally, as to the reference to the review by the TMB of a restraint measure agreed between the United States and Thailand, the TMB observed that the circumstances in which the examination of the US/Thailand and the US/Pakistan cases had been conducted were different, having also an impact on the TMB's consideration of the particular issues. While Thailand had not brought to the TMB's attention any possible problem related to the definition of domestic industry provided by the United States, the Body, on its own initiative, had taken the decision to seek clarifications from the United States in this regard. The TMB had had to reach a conclusion, pursuant to Article 6.9, on the basis of the limited additional information received from the United States. The TMB's report regarding the US/Thailand case reflected the uneasiness with which the TMB had considered this particular aspect of the case, stemming, *inter alia*, from the fact that the United States had not provided information, pursuant to Article 6.7, on the vertically integrated firms. On the other hand, in the US/Pakistan case, the definition of the domestic industry and the related requirements in terms of information to be provided, pursuant to Article 6.7, had already become a core issue during the bilateral consultations held pursuant to Article 6.7, and this was subsequently confirmed during the examination conducted by the TMB pursuant to Article 6.10. The detailed arguments made by the two Members, their respective positions regarding the justification under the ATC, or the lack thereof,

to exclude a segment of the domestic industry producing like and/or directly competitive products from the scope of the investigation as well as a number of additional factual information offered by the two parties relevant to this aspect of the particular case, led the TMB to identify this aspect as one of the most important issues to be addressed during its consideration.

146. As regards the time-period covered by the information provided, though it was the view of the United States that it would be unreasonable to expect the collection of data to be more up-to-date than August 1998, the TMB observed that consultations had been requested with Pakistan at the end of December 1998 and that, therefore, the reference period, referred to in Article 6.8, would normally include September 1998. Furthermore, data provided on a year-ending August 1998 basis could have perhaps shed additional light on developments affecting the industry in question.

147. After addressing some arguments related to developments in and the state of the domestic industry such as the evolution of employment, the closure of plants, investment and restructuring in the US domestic cotton industry, the TMB offered comments in respect of the review it had conducted under Article 6.10. The TMB recalled that the United States had provided information on all the economic variables listed in Article 6.3 together with two other additional variables, but only pertaining to the domestic industry as defined by it. The fact that the TMB had not been able to assess, on the basis of the information so provided, whether or not serious damage had been caused to the US industry producing products like and/or directly competitive with combed cotton yarn, did not mean that the TMB had raised the level of requirements regarding the information to be provided. Nor did it mean that "these additional requirements had been applied in a non-transparent and arbitrary manner". The TMB held the view that it was not an additional requirement, nor an increase in the level of requirements, that on the basis of the information provided pursuant to Article 6.7 the Body had to be placed in a position whereby it would be able to determine whether the measure referred to it was justified, or not, under the provisions of Article 6. In examining the measure referred to it pursuant to Article 6.10, the TMB had found, in particular, that only limited information, in the sense of Article 6.3, had been provided by the United States regarding a segment of the domestic industry representing about one-third of the total domestic production of combed cotton yarn. The fact that the TMB was faced with these limitations on the information which would have enabled it to decide whether or not the domestic industry producing like and/or directly competitive products had been correctly identified by the United States, was instrumental in leading the Body to conclude that it had not been in a position to assess whether or not the US measure was justified in accordance with Article 6. In respect of the contention of the United States that the TMB had introduced a "without doubt" standard going beyond its mandate under the ATC, the Body wanted to make it clear what its conclusions actually meant: the reference to "without doubt" arose from the serious limitations stemming from the information provided, as a result of which the TMB had not been in a position to make a finding as to whether the determination on the existence of serious damage or actual threat thereof made by the United States was justified, or not, under the provisions of the ATC.

148. Having given thorough consideration to the reasons presented by the United States for its inability to conform to the TMB's recommendation, the TMB concluded that these reasons did not lead it to change the conclusions and recommendation arrived at by it during its examination of the measure pursuant to Article 6.10. The TMB recommended, therefore, that the United States reconsider its position and that the measure introduced by the United States on the imports of category 301 products from Pakistan should be rescinded forthwith.

149. Following this examination, the TMB received a communication from the United States, in August 1999, informing the Body that after having carefully examined the conclusions reached by the TMB "the US remains convinced that the US action is justified under the provisions of Article 6 of the ATC. We have therefore decided to maintain this restraint in place. We will, however, keep trade and production trends under review". The TMB took note of this communication at its meeting of September 1999, recalling that the safeguard measure in question had already been dealt with in detail

by it on two previous occasions, initially during its review of the matter pursuant to Article 6.10 and, subsequently, under Article 8.10. The TMB observed that following the recommendation it had made pursuant to Article 8.10, the Body was not mandated under the ATC to review this communication, and noted that Article 8.10 of the ATC states that "[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".

150. In April 2000, Pakistan requested the establishment of a panel pursuant to Article XXIII:2 of GATT 1994[84] which the DSB established.[85] The Panel issued its report in May 2001.[86] The Panel concluded that "that the transitional safeguard measure (quantitative restriction) imposed by the United States on imports of combed cotton yarn from Pakistan as of 17 March 1999, and extended as of 17 March 2000 for a further year is inconsistent with the provisions of Article 6 of the ATC". Specifically, the Panel found that "inconsistently with its obligations under 6.2, the United States excluded the production of combed cotton yarn by vertically integrated producers for their own use from the scope of the 'domestic industry producing like and/or directly competitive products' with imported combed cotton yarn". It also found that "inconsistently with its obligations under Article 6.4, the United States did not examine the effect of imports from Mexico (and possibly other appropriate Members) individually" and that "inconsistently with its obligations under Articles 6.2 and 6.4, the United States did not demonstrate that the subject imports caused an 'actual threat' of serious damage to the domestic industry". But these findings were provided on the basis that the United States had defined the domestic industry in conformity with Article 6.2, which had not been the case. With respect to other claims the Panel found that "Pakistan did not establish that the measure at issue was inconsistent with the US obligations under Article 6 of the ATC". However, this latter conclusion had to be read in light of the Panel's finding that the United States had not properly defined the domestic industry. Specifically, the Panel found that "Pakistan did not establish that the US determination of serious damage was not justified based on the data used by the US investigating authority", that "Pakistan did not establish that the US determination of serious damage was not justified regarding the evaluation by the US investigating authority of establishments that ceased producing combed cotton yarn" and that "Pakistan did not establish that the US determinations of serious damage and causation thereof were not justified based upon an inappropriately chosen period of investigation and period of incidence of serious damage and causation thereof". Since "pursuant to Article 3.8 of the DSU which provides that 'In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification and impairment', [the Panel concluded that] the said US measure nullified and impaired the benefits of Pakistan under the WTO Agreement, in particular under the ATC". Noting that "Pakistan requested that the Panel suggest in accordance with Article 19.1, second sentence, of the DSU that the most appropriate way to implement the Panel's ruling would be to rescind the safeguard action forthwith", the Panel recommended "that the Dispute Settlement Body request that the United States bring the measure at issue into conformity with its obligations under the ATC. We suggest that this can best be achieved by prompt removal of the import restriction".

151. On 9 July 2001, the United States notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel report and certain legal interpretations developed by the Panel.

2. Application by Colombia

(a) Imports of denim fabric

152. In April 1998, Colombia requested consultations with Brazil; Chile; India; Peru and Venezuela with a view to applying transitional safeguard measures on imports of denim fabric from

[84] See WT/DS192/1.
[85] See WT/DSB/M/84.
[86] See WT/DS192/R.

these Members. Colombia provided them with factual information as referred to in Article 6.7, which had also been communicated to the Chairman of the TMB.

(i) Chile, Peru and Venezuela

153. With respect to Chile, Peru and Venezuela, Colombia decided not to introduce a restraint measure on imports of denim fabric from these WTO Members.

(ii) Brazil and India

154. Colombia held consultations with Brazil and India respectively, which did not result in a mutual understanding that the situation called for restraint on the imports of denim fabric from these two Members. Pursuant to Article 6, Colombia notified to the TMB that it had introduced, in July 1998, transitional safeguard measures on imports of denim fabric (tariff heading 52.09.42) from Brazil and India, for a period of three years. Though it was not specified in the notification, the TMB understood that the restraint had been applied pursuant to Article 6.10.

155. The TMB considered these safeguard measures at its meeting held at the end of July 1998, with the participation of representatives from Brazil, Colombia and India. In starting its examination of the matter, the TMB first had to assess the determination of serious damage resulting from increased quantities in total imports made by Colombia. In order to make this assessment, the TMB had to check, *inter alia*, that the volume of imports of denim into Colombia had increased, the effect of those increased imports on the state of the particular industry as reflected in changes in the economic variables listed in Article 6.3, and that the damage was caused by such increased quantities in total imports of denim and not by such other factors as technological changes or changes in consumer preference.

156. Before proceeding to such a systematic detailed examination, however, the TMB addressed the time-lag of about fifteen months that had taken place between the investigation concluded by the Colombian Foreign Trade Institute (INCOMEX) and the time at which Colombia had requested consultations with, *inter alia*, Brazil and India. The TMB recalled in this respect that, according to Article 6.7, the information referred to in Articles 6.3 and 6.4 shall be related, as closely as possible, to the reference period set out in Article 6.8, i.e. the 12-month period terminating two months preceding the month in which the request for consultation was made (i.e. in this case, the period February 1997 to January 1998). The TMB recognised that this formulation allowed for some flexibility, in particular in view of the availability of most recent data. In the view of the TMB, however, this did not provide for the possibility of taking a safeguard measure on the basis of economic variables describing the status of the industry almost two years before the time at which the request for consultation had been made. In this regard, the TMB noted that Article 6.2 referred to a situation where "a particular product *is being imported* […] in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry" (emphasis added). This causal link seemed to indicate that the serious damage had to occur in a period close to the time at which the request for consultation was made. It followed that the information provided to demonstrate the serious damage had to be recent.

157. The time-lag between the conclusion of the investigation and the request for consultations had resulted in the consideration by Colombia of data for a period which, in the view of the TMB, was clearly not related as closely as possible to the reference period set out in Article 6.8. Claiming serious damage, in April 1998, on the basis of data referring to the state of an industry in the first half of 1996 at the latest, could not be found to be in accordance with the requirements of Article 6. The evolution of the economic situation since then could have resulted in significant developments. In particular, it was clear from the information provided by both Brazil and India that, although total imports of denim into Colombia had increased in 1994, 1995 and 1996, such imports had decreased in 1997.

158. The TMB further observed that Article 6.10 required that a restraint be introduced at the latest "within 30 days following the 60-day period for consultations". Colombia had requested consultations with Brazil and India on 17 April 1998 and the transitional safeguard measures had been introduced on 17 July 1998, after the deadline had lapsed.

159. In view of the elements mentioned above, the TMB found that since Colombia had failed to demonstrate that its industry producing denim was experiencing serious damage caused by increased quantities in total imports of that product, the restraint measures it had introduced on imports of denim from Brazil and India were not justified in accordance with Article 6. The TMB, therefore, recommended that Colombia rescind these measures.

160. The TMB subsequently received and took note of a communication from Colombia pursuant to Article 8.9 that Colombia had annulled the resolution imposing a transitional safeguard measure on imports of denim from Brazil and India.

(b) Imports of plain polyester filaments

161. In August 1998, Colombia requested consultations, pursuant to Article 6.7, with Korea, Malaysia, Thailand and the United States with a view to applying transitional safeguard measures on imports of plain polyester filaments and provided them with factual information, as referred to in Article 6.7, which had also been communicated to the Chairman of the TMB. Colombia held consultations with the four Members.

(i) Malaysia and the United States

162. Colombia excluded Malaysia from the Members to which it would apply the safeguard measure since "when the consultations [had been] concluded, it [had] found that the attribution of damage [to Malaysia, on the basis of which the consultations had been sought,] had been uncertain", and notified the TMB accordingly. As regards consultations between Colombia and the United States, the TMB subsequently received a communication from Colombia that, following the completion of these consultations, Colombia had found that no damage was attributable to imports from the United States. The level of imports from the United States was, according to the communication, lower than had originally been estimated, owing to an error in the customs documentation prepared by the importer. The TMB took note of this communication.

(ii) Korea and Thailand

163. Consultations with Korea and Thailand did not result in a mutual understanding as to whether the situation called for restraint on the imports from these two Members. In November 1998, Colombia notified the TMB that it had decided, on 26 October 1998, to apply transitional safeguard measures on imports of plain polyester filaments from Korea and Thailand, for a period of one year.

164. The TMB considered these safeguard measures at its meeting of November 1998 and invited the participation of representatives of Colombia, Korea and Thailand. The TMB recalled that, pursuant to Article 6.2, Colombia had to demonstrate that the particular product (plain polyester filaments) was 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. The TMB noted that the volume of total imports into Colombia of the product in question had increased significantly during the period considered, which included the period set out in Article 6.8 and covered also the years 1995 to 1997. However, Colombia had provided information regarding the economic variables referred to in Article 6.3 which reflected data pertaining only to one company which represented, on average, 62 per cent of the total domestic production of plain polyester filaments. The TMB observed in this respect that the ATC does not provide a definition of what constitutes the domestic industry. It noted, however, that Colombia had failed to provide information on a significant part of its domestic industry producing plain polyester filaments. This

lack of information brought about important uncertainties and, therefore, hampered the TMB's ability to assess the situation of the Colombian industry producing plain polyester filaments.

165. The TMB also noted Colombia's efforts to provide information related to plain polyester filaments. It observed, however, as was confirmed by Colombia, that the company regarding which data had been provided, produced a number of products falling under HS 54 02 including plain polyester filaments. The TMB observed in this respect that the ATC does not provide a definition of what constitutes like and/or directly competitive products. The TMB noted, however, that in the case of plain polyester filaments, HS lines having descriptions quite similar could be like and/or directly competitive products. This created difficulties for the TMB in assessing the matter.

166. Despite the fact that, in the view of the TMB, these issues limited its ability to reach an appropriate conclusion regarding the determination of whether or not the Colombian domestic industry producing like products and/or products directly competitive with plain polyester filaments was experiencing serious damage, as required under Article 6.3, the TMB decided to make an examination of the possible effects of the increased quantities in total imports of plain polyester filaments on the state of the particular industry, as specified in Article 6.3, on the basis of the information available. The TMB noted in this respect that it could not base its assessment regarding the state of the industry on estimates provided by Colombia for the year 1998; and that the monthly averages provided by Colombia could not be considered in most cases as providing reliable indications. For data to be meaningful, Colombia would have had in the present case to have provided comparisons either on a January/May basis (i.e. January-May 1998 compared to January-May of the previous years) or on a year-ending May basis (i.e. June 1997 to May 1998, compared to the corresponding previous period). This further complicated the task of examining Colombia's determination that the domestic industry in question had been suffering serious damage. Within these limitations, the TMB was of the view that the evolution of some variables such as output, capacity utilization, inventories, market share, employment, domestic prices, profits and investments could be a signal of the existence of serious damage. The TMB could not obtain any significant indication from the evolution of variables such as productivity, exports and wages.

167. In view of the serious limitations mentioned above, it was not possible to assess whether or not serious damage had been caused to Colombia's industry producing like and/or directly competitive products by increased imports of plain polyester filaments. Therefore, in the view of the TMB, Colombia had not demonstrated successfully that plain polyester filaments were being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to its domestic industry producing like and/or directly competitive products. The TMB recommended, therefore, that the measures introduced by Colombia on imports of plain polyester filaments from Korea and Thailand should be rescinded.

168. In December 1998, the TMB received a communication from Colombia, under Article 8.10, in which Colombia conveyed its inability to conform with the Body's recommendation that the measures introduced by Colombia should be rescinded. Colombia considered that the measures adopted were compatible with the requirements of Article 6, and that the interpretations and conclusions of the TMB were not in keeping with the legal requirements of the ATC. The TMB reviewed this matter at its meeting in February 1999 with the participation of the representatives of the parties concerned.

169. After having heard the arguments presented by the representatives of Colombia, Korea and Thailand, the TMB carefully considered them, in particular, by addressing in detail the reasons given by Colombia for its inability to conform with the Body's recommendations. In doing so, the TMB recalled, *inter alia*, that the communication of Colombia stated that the "TMB found that there had been a substantial increase in imports and that trends in eight of the eleven variables referred to in Article 6.3 appeared to indicate serious damage." However, "[a]ccording to the TMB, there were

three reasons" for concluding that it was not possible to assess whether or not serious damage had been caused to Colombia's industry, namely:

- the information submitted in respect of damage did not cover 100 per cent of the Colombian producers of plain polyester filaments;
- the product subject to the measures did not represent all like and/or directly competitive products under HS Chapter 54; and
- the information on damage did not concern an elapsed year.

In the view of Colombia, none of the three reasons had legal foundation under the provisions of Article 6.

170. As to the definition of the domestic industry producing plain polyester filaments, the TMB, bearing in mind in particular the information that had been made available by Colombia pursuant to Article 6.7, continued to be of the view that in the absence of any information on a significant part of the domestic industry, it had not been possible to assess the state of the industry producing plain polyester filaments, in particular the effect of increased imports on the companies constituting the domestic industry producing the particular product. Therefore, it had been impossible to determine whether the difficulties encountered by the company requesting the investigation could be attributed to a possible damage caused by the increased volume of total imports or to other factors. Furthermore, the TMB could not agree with the contention of Colombia that the Body had considered that information on the domestic industry producing like and/or directly competitive products should cover 100 per cent of the domestic producers of such products. The TMB observed that it had not provided any interpretation of the definition of the term "domestic industry". Similarly, the TMB had not suggested that the information on the domestic industry should cover 100 per cent of the domestic producers of such products. It was merely a factual statement applying to the particular case that "Colombia had failed to provide information on a significant part of its domestic industry producing plain polyester filaments". It could not be questioned in the particular case that 38 per cent of the overall domestic production constituted a significant part of the domestic industry, whether this was the output of one single company or of a number of producers. The lack of interest in participating in the investigation by one company could not be a justification for not providing any information at all on that portion of the industry. The TMB considered that it was the responsibility of the authorities of a Member invoking the provisions of Article 6 to demonstrate to the Member(s) affected and to the TMB that increased imports caused serious damage to the domestic industry. Moreover, there was a range of possibilities between providing no information at all and offering all the specific and relevant information required by the relevant provisions of Article 6. In the particular case, the TMB was of the view that the Colombian authorities should have provided more information on the rest of the domestic industry. At least, it could have been explained why Colombia considered that information on 38 per cent of the domestic production could be completely, or for the most part, dismissed, or why Colombia believed that bringing the production of the given company into the scope of the examination would not alter its conclusions based solely on the data provided by the applicant company representing on average 62 per cent of the domestic production.

171. During the consideration of the matter, it was also stated that contrary to what had been suggested by Colombia, the TMB had expressed no view on the selection of the product subject to the safeguard measures, but had made observations on the lack of appropriate information regarding what constituted the domestic industry producing like and/or directly competitive products in the particular case. If Colombia considered that the only like products, and/or the products directly competitive with plain polyester filaments (tariff heading 54.02.43) were those falling under the same 6-digit tariff heading, it was up to Colombia to explain convincingly why HS lines having descriptions quite similar to the product subject to the safeguard measures should not be considered as constituting like and/or directly competitive products (for the purpose of defining the industry affected by imports).

But without any information or in the absence of a convincing explanation, it was not possible to determine whether the decline of the domestic production of yarn of polyester filaments, single, untwisted was attributable to the damage caused by increased quantities of total imports, or to other factors which could be part of a normal business decision, such as the shifting of the production of this product to another which could constitute a like and/or directly competitive product to the plain polyester filaments.

172. The TMB agreed with Colombia that Article 6 did not lay down a single methodology for the presentation of information regarding imports or economic variables referred to in Article 6.3. However, the Body continued to be of the view that in the case referred to it by Colombia, the presentation of information was such that it did not allow a reliable comparison of the developments or changes in the relevant economic variables referred to in Article 6.3. The reference of the TMB to the January/May comparisons was not an interpretation and was not contrary to any provision of Article 6, since the Body had not suggested that this information should have been provided in lieu of the information submitted, but in addition to what had been made available. Without such additional information, it was not possible for the TMB to assess whether developments during the first five months of 1998 could be an indication of serious damage caused by imports or whether they constituted a seasonal phenomenon which had characterised the domestic industry in the same period of the preceding years as well. The TMB recognized that Colombia had explained that the product subject to safeguard measures was not subject to seasonal factors. This statement, however, had not been substantiated by the information presented pursuant to Article 6.7.

173. It was also noted that with reference to Articles 6.10 and 8.3, Colombia had revised and supplemented in its notification, under Article 8.10, certain elements of the detailed factual information previously provided. In this regard, the TMB expressed the view that it could not be expected to conduct a *de novo* examination of the determination of the serious damage caused to the domestic producers of the like and/or directly competitive products. The TMB reiterated its earlier statement that "its review of the measures introduced by Colombia had to be based essentially on the information made available by Colombia in accordance with Article 6.7 at the time the request for consultations had been made".

174. In conclusion, after examining in detail all the arguments presented by Colombia, and following the thorough consideration of the reasons given by Colombia, the TMB recommended that Colombia reconsider its position and that the measures introduced by Colombia on imports of plain polyester filaments from Korea and Thailand should be rescinded forthwith.

175. At its meeting in April 1999, 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 it had received no information from Colombia on the implementation of this recommendation, the TMB decided to request such information from Colombia. Following an interim reply in May 1999, the TMB received a further communication from Colombia in June 1999. This communication briefly set out the reasons why the Government of Colombia considered that the measures in question complied with the provisions of Article 6 and that, therefore, in its view, the safeguards applied to imports of plain polyester filaments from Thailand and Korea were justified. Colombia would, therefore, maintain the safeguards as notified to the TMB.

176. In taking note of this latter communication, the TMB observed that following the recommendation it had made pursuant to Article 8.10, the Body was not mandated under the ATC to address the substantive elements of this communication, including the reasons provided by Colombia; the safeguard measures in question had already been dealt with in detail by the TMB on two occasions, initially during its review of the matter pursuant to Article 6.10 and, subsequently, pursuant to Article 8.10. The TMB observed that the measures had been introduced by Colombia as from 26 October 1998 for a period of one year and would, consequently expire on 25 October 1999. The

TMB recognized that Article 8.10 does not define a deadline for action to be taken by the Member(s) concerned pursuant to a recommendation made by the TMB under its provisions. The TMB expressed concern, however, that it had taken Colombia almost five months to inform the TMB about its decision. Recalling the provisions of Article 8.9 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", the TMB emphasized that such a proper surveillance required Members to inform the TMB without undue delay of their decisions with regard to the implementation of its recommendations. Furthermore, in the view of the TMB, this was the only way to ensure that the rights of any of the affected Members under Article 8.10 would be fully protected.

177. In September 1999, Thailand requested the establishment of a panel pursuant to Article XXIII of the GATT 1994, Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 8 and other relevant provisions of the Agreement on Textiles and Clothing, with respect to Colombia's safeguard measure establishing a unilateral restraint on imports of plain polyester filaments from Thailand. According to Thailand, the measure was inconsistent with at least the following WTO Agreement obligations: (i) the requirements of Article 6 of the ATC regarding the application by the Members of a transitional safeguard mechanism; and (ii) the provisions contained in Article 2 of the ATC regarding the introduction and the application of restrictions by the Members. The DSB considered this request at its meeting in September 1999. Korea, having substantial interests in this case, reserved its third party-rights if a panel were to be established. At subsequent meetings of the DSB in October and November 1999, the measure in question having expired and Colombia having confirmed that the measure had expired, and that it had not been and could not be extended, Thailand withdrew its request for the establishment of a panel.

3. Requests for Consultations by Poland

(a) Imports of woven fabrics of synthetic filament yarn from Korea

178. In April 1999, Poland requested consultations with Korea, pursuant to Article 6.7, with a view to introducing a safeguard measure on imports of woven fabrics of synthetic filament yarn from Korea and communicated the request to the Chairman of the TMB, in accordance with the provisions of that Article. The TMB did not receive information on the outcome of the consultations. However, the deadline specified in Article 6 for applying the restraint lapsed without such a restraint being introduced by Poland.

(b) Imports of certain acrylic or modacrylic staple fibres from Romania

179. On 23 April 2001, Poland requested consultations with Romania, pursuant to Article 6.7, concerning a proposed safeguard action on imports from Romania of products falling under HS 550931, 550932 and 550961. By the date of the adoption of this report, the TMB had not received any follow-up communication related to this matter.

4. Application by Argentina

(a) Imports of high tenacity yarn of polyester filaments from Indonesia, Korea and Malaysia and staple fibres of polyester from Korea

180. At its meeting of October 1999, the TMB took note of a communication by Argentina informing the TMB that, following consultations held by Argentina with Indonesia; Korea and Malaysia pursuant to Article 6.7, the Argentine authorities had decided not to apply the safeguard measure envisaged for imports of polyester fibre yarn from Indonesia, Korea and Malaysia, and for imports of polyester fibre from Korea.

(b) Imports of woven fabrics of cotton and cotton mixtures (categories 218, 219/220, 224, 313/317 and 613/617/627)

(i) Brazil

181. In July 1999, Argentina requested consultations with Brazil, pursuant to Article 6.11, and provided it with factual information, as referred to in Article 6.7. Such information was at the same time communicated to the Chairman of the TMB. Argentina had decided to introduce, with effect from 31 July 1999 and for a duration of three years, a provisional safeguard measure on imports of woven fabrics of cotton and cotton mixtures, consisting of five quotas on imports from Brazil of products of categories 218 (woven cotton and cotton mixtures fabrics of yarns of different colours), 219/220 (duck/special-weave cotton and cotton mixtures fabrics), 224 (pile tufted cotton and cotton mixtures fabrics), 313/317 (sheeting/twill cotton and cotton mixtures fabric) and 613/617/627 (sheeting fabrics/twill and satin/staple-filament fibre combinations of cotton and cotton mixtures). Consultations were held between the two Members, which did not result in a mutual understanding as to whether the situation called for restraint on the imports of the above-mentioned products. In September 1999, Brazil notified to the TMB, pursuant to Article 6.11, that these consultations had not resulted in agreement and requested the TMB to examine the matter and make appropriate recommendations, in accordance with Article 6.11.

182. The TMB examined the matter at its meeting of October 1999, with the participation of representatives of Argentina and Brazil. Before turning to the examination of the transitional safeguard measures category by category, the TMB noted that in the introductory part of the information submitted by Argentina as referred to in Article 6.7, containing the general considerations applicable to the sector comprised of the five categories that were subject to the safeguard measure, specific information had been provided for the period 1995-1998, i.e. for four calendar years. It was further noted that, in the detailed category-specific information, data had been presented for the same period as well as for the period May 1998/April 1999. The TMB recalled that the relevant provisions of the ATC (Article 6.7) required, *inter alia*, that "[i]n respect of requests [for consultations] made under this paragraph, the information shall be related, as closely as possible, to identifiable segments of production and to the reference period set out in paragraph 8" of Article 6. In the particular cases referred to the TMB and subject to its review, this reference period, in accordance with Article 6.8, corresponded to the period May 1998/April 1999, for which category-specific information had been provided by Argentina. It had to be observed, however, that in the factual information given by Argentina, developments of this most recent period could not be compared to the state of the domestic industry as reflected in the different variables during a preceding corresponding period, i.e. during May 1997/April 1998, since all other data had been provided on a calendar-year basis. Though Argentina gave indications (expressed in terms of percentages) regarding "changes over 12 months", these indications could not be considered to provide a reliable basis, as they compared data relating to May 1998/April 1999 to those reported for January/December 1998. Therefore, between the two data series compared there had been an overlap of eight months. Reliable indications cannot be obtained but by comparing data for identical time-periods. Though Argentina had explained that there had not been indications referring to the existence of seasonal factors, the TMB was of the view that the availability of data for the calendar-year 1998 and for the period May 1998/April 1999 could give an indication for comparing trends between January to April 1998 and the same period in 1999, but did not allow for more far-reaching comparisons.

183. The TMB also noted that providing data for a relatively longer time-period, like in the present cases from 1995-1998, could be useful for having a better understanding of the trends characterising developments that occurred to the domestic industry. Such an approach was particularly helpful in identifying whether certain developments had reflected lasting phenomena or rather had been of a temporary nature. At the same time, the TMB reiterated that in examining and assessing the determination of serious damage, or actual threat thereof, caused to the domestic industry producing like and/or directly competitive products by increased quantities of imports, decisive guidance had to

be provided by the developments which had occurred in the most recent period, while data related to the longer time-period provided supplementary information that could support the justification of the determination made. The evidence that developments in the most recent period should have a decisive role in such a determination was, in the view of the TMB, supported by the time-frame referred to in Articles 6.7 and 6.8, by the requirements defined in Article 6.2 that in a determination it has to be demonstrated that a particular product "is being imported" in increased quantities, and by the period of validity of a determination of serious damage or actual threat thereof for the purpose of invoking safeguard as stated in Article 6.5. Also, the object and the nature of the ATC (constituting an agreement for a transition period) as well as Article 6.12 (allowing for the maintenance of a transitional safeguard measure for up to three years without extension), confirmed that a determination of serious damage, in the sense of Article 6, could not be based on developments that had affected the domestic industry years before the actual determination was being made.

184. With respect to imports of products of category 218 (woven cotton and cotton mixtures fabrics of yarns of different colours), the TMB observed that imports in 1998 had decreased by 15 per cent in volume terms compared to 1997, and that this trend had not been reversed during the most recent period for which data were available. The TMB also observed that the evolution of imports and output from 1996 to 1998 (both had increased in 1997 and decreased in 1998) did not point to the direction of the existence of a causal link between a possible damage to the industry and the evolution of imports. In view of such considerations, the TMB concluded that it had not been demonstrated that products of category 218 were being imported into Argentina at the time Argentina had decided to introduce a safeguard measure, pursuant to Article 6.11, in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. Therefore, the TMB recommended that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil.

185. With respect to imports of products of category 219/220 (duck/special-weave cotton and cotton mixtures fabrics), the TMB observed that imports in 1998 had decreased by about 50 per cent compared to 1997. While the data related to May 1998/April 1999 could not reliably be compared to those for the calendar year 1998, imports during this most recent period did not show an important increase. As to the trends for the previous years, though the increase from 1995 to 1996 had been sizeable, imports had started to decrease in 1997. The TMB concluded, therefore, that it had not been demonstrated that products of category 219/220 were being imported into Argentina, at the time Argentina had decided to introduce a safeguard measure pursuant to Article 6.11, in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. The TMB recommended, therefore, that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil.

186. Regarding imports of products of category 224 (pile tufted cotton and cotton mixtures fabrics), the TMB noted that while total imports of the products of category 224 had increased by 54 per cent from 1995 to 1996, and by a further 36.5 per cent from 1996 to 1997, they had decreased by 1.8 per cent in 1998 compared to 1997. While the data related to May 1998/April 1999 could not reliably be compared to those for the calendar year 1998, imports during this most recent period showed show a further decrease. Against this background, the TMB noted that in those years when imports had increased significantly (i.e. 1996 and 1997), output had also increased (respectively, by 10 and 3 per cent). In 1998, output had decreased by 10.4 per cent, and imports had also declined. Although the market share of imports and inventories had continuously increased and domestic prices had decreased, the information at hand, in particular developments in output and in the apparent consumption did not support a conclusion that a causal link between the situation experienced by the industry at the time Argentina had introduced the safeguard measure and the evolution of imports could be established. In the view of the TMB, the recent developments in the domestic industry could rather have been the result of business decisions taken by the industry, like the shifting of production to other lines of products, or of structural problems or broader macroeconomic developments such as a contraction of the economy resulting from a recession.

187. In view of the considerations stated above, the TMB concluded that it had not been demonstrated that products of category 224 were being imported into Argentina, at the time Argentina had decided to introduce a safeguard measure pursuant to Article 6.11, in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. Therefore, the TMB recommended that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil.

188. With respect to imports of products of category 313/317 (sheeting/twill cotton and cotton mixtures fabric), the TMB noted that following a period of significant increase (1996/1995: 100 per cent; 1997/1996: 27.7 per cent) imports had decreased by 4.6 per cent in 1998, compared to 1997. The TMB also noted that Argentina had, in addition, provided data for imports for the period May 1998/April 1999 which showed that imports were, during this 12-month period, at a level 1.4 per cent higher than that of the level of imports for the calendar year 1998. Against this background, the Body observed that domestic production had varied in parallel with the evolution of domestic demand: it had increased in 1996 and 1997 (respectively, by 22 and 3 per cent), and fallen (by 10 per cent) in 1998. These trends had paralleled the evolution of imports. Production capacity had increased by 13 per cent in 1996, and had remained at the same level thereafter. Capacity utilization had fallen in 1998, below the 1995 rate, after an upward trend from 1995 to 1997. Employment had increased significantly from 1995 to 1996, and decreased in 1997 and 1998, reaching a level higher, however, than that of 1995. Average productivity, on the other hand, had increased throughout the period 1995-1998 (though the dynamics of this increase had slowed down in 1998). End-product inventories had increased by 57 per cent from 1995 to 1998, while average domestic prices had decreased by about 11 per cent. Overall, in the view of the TMB, though some variables, in particular output, domestic sales, inventories and domestic prices, reflected unfavourable developments and could point to a direction of an industry being seriously damaged, others seemed to indicate the possibility of the existence of structural problems or of the impact of a recession.

189. In this context, the TMB observed that the imports of the products of category 313/317 had decreased in 1998 compared to 1997, the period for which directly comparable data were available, closest to that when Argentina had decided to introduce a safeguard measure on imports of the products of category 313/317 from Brazil. The TMB also noted that the data provided by Argentina for the period May 1998 to April 1999 showed that the level of imports reached for that 12-month period was 1.4 per cent higher than that of the calendar year 1998. In this regard, the TMB observed that the data for the two periods could not be directly compared, and that, furthermore, it was not in a position to assess whether this latest evolution relating to the period January-April 1999, indicated a lasting trend or was that of a temporary nature.

190. In view of the considerations stated above, the TMB concluded that it had not been demonstrated that products of category 313/317 were being imported into Argentina, at the time Argentina had decided to introduce a safeguard measure pursuant to Article 6.11, in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. The TMB recommended, therefore, that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil.

191. With respect to imports of products of category 613/617/627 (sheeting fabrics/twill and satin/staple-filament fibre combinations of cotton and cotton mixtures), the TMB noted that, in the view of Argentina, as reflected in the information submitted pursuant to Article 6.7, as a result of excessive imports between 1995 and the year-ending April 1999, the domestic producers had lost an important share of apparent consumption, while during the same period the ratio of imports to domestic production had increased by 300 per cent. Though the sector including, among others, category 613/617/627 products had continued to make substantial investments in order to maintain competitiveness, the excessive increase in imports during the period under investigation had caused serious damage to the domestic industry manufacturing goods pertaining to this category, and this damage could not be attributed to technological innovation or changes in consumer preferences.

192. The TMB observed that in 1998 total imports of products of category 613/617/627 had increased by 17.4 per cent compared to 1997. Though data provided for May 1998/April 1999 could not be compared due to the lack of information for the preceding corresponding period, they indicated that in the period of January/April 1999 imports had remained at the high level already achieved. Regarding trends, it could be observed that the rate of increase from 1996 to 1997 amounted to 63.4 per cent, while the corresponding figure for 1996/1995 was 58.0 per cent. Therefore, there was an increase in the quantity of total imports during the period for which comparable data had been provided and this trend had been continuous since 1995.

193. In view of the above, the TMB proceeded to the examination of the determination of serious damage resulting from increased quantities of total imports made by Argentina. First, the TMB addressed the possible effect of those increased imports on the state of the particular industry as reflected in changes in the economic variables listed in Article 6.3 and in a few other indicators reported by Argentina. Overall, the TMB recognized that the industry producing products of category 613/617/627 had been affected by unfavourable developments, and that the difficulties experienced did not seem to be over.

194. In the view of the TMB, it could be argued that the data related to output, sales, imports and prices pointed to the direction of serious damage caused by increased quantities of imports, and other indicators either confirmed or did not contradict such a possible conclusion. Following this reasoning, the continuous and important increase of the volume of total imports, coupled with a price level below average domestic prices, had exercised an important pressure on and had caused difficulties to the domestic producers of like and/or directly competitive products. Domestic output had fallen during the most recent period; domestic sales of the production had shown a declining trend both in absolute terms and relative to the output; inventories had increased and, as a result of these developments, the market share held by imports had increased significantly. The domestic producers had tried to adjust to these circumstances, in particular by cutting back the production capacity and also perhaps by making investments. As a result, there had also been some positive developments, such as the increase in the average productivity. However, these efforts did not seem to be sufficient to halt the negative trends affecting the domestic producers.

195. It could also be argued, however, that the difficulties experienced by the industry had primarily been of a structural nature and that the trends in imports had simply reflected, as a symptom, the basic roots, i.e. the structural problem. Efforts had been made to adjust, *inter alia*, through reducing production capacity, and though these measures had had some favourable impact, they had not been sufficient as yet to redress the situation. Similarly, it could be argued that business decisions taken by the integrated industry could also have contributed to the trends characterising the overall state of the industry. Despite the changes in the level of output, domestic producers' own consumption had remained relatively stable in relation to the total output. This could point to the possibility of shifting to more profitable production lines, and also to reduced demand of further processed products for which products of category 613/617/627 had been an input. Also, the increased reliance on less expensive inputs could not be excluded, as part of a business strategy. There could also be a reading according to which the main reasons for the state of the domestic industry had to be sought in broader macroeconomic developments such as a general contraction of the economy resulting from a recession.

196. In reflecting on the possible explanation of the causes of the problems identified as affecting the domestic producers of products of category 613/617/627, the TMB reached the preliminary conclusion that such difficulties could arise from multiple reasons having a mutually reinforcing effect, as described above. Concerns were expressed about the lack of possible evidence and information at the Body's disposal that would have enabled it to reach a definitive conclusion on whether imports were the primary reason for the industry's difficulties. The TMB did not make a final determination as to whether increased imports of products of category 613/617/627 had caused serious damage to the domestic industry producing like and/or directly competitive products.

Notwithstanding that fact, keeping also in mind that the transitional safeguard measure had already been implemented as from 31 July 1999 and that the TMB had to make appropriate recommendations to the Members concerned, the Body noted that imports by Argentina of products of category 613/617/627 originating in Brazil had not increased sharply and substantially during the period referred to in Article 6.8 (imports from Brazil had actually decreased by 20.8 per cent in 1998 compared to 1997, and this declining trend seemed to continue during the period January-April 1999). The TMB recommended, therefore, that Argentina rescind the safeguard measure introduced against imports of products of this category originating in Brazil.

197. The TMB noted that Argentina had invoked the provisions of Article 6.11 which provided that "[i]n highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10 [of Article 6] 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 the case that consultations do not produce agreement, the TMB shall be notified at the conclusion of consultations, but in any case no later than 60 days from the date of the implementation of the action". The TMB noted that the procedural requirements defined in Article 6.11 had been met. However, it was observed that, *inter alia*, apart from references to continuing damage, the information given by Argentina did not provide an analysis of the highly unusual and critical circumstances that would have warranted an action pursuant to Article 6.11. The TMB reiterated its view, expressed earlier, that in cases where the provisions of Article 6.11 were invoked the expectation was that the elements envisaged in Articles 6.2, 6.3 and 6.4 would indicate as unambiguously as possible the highly unusual and critical nature of the circumstances. The TMB was of the view that unless such circumstances were met, any action taken under Article 6 should be preceded by consultations between the parties. In the light of the conclusions reached with respect to the specific categories subject to safeguard and the above observations, the TMB noted that the recourse by Argentina to the provisions of Article 6.11 had not been appropriate.

198. In November 1999, following the examination summarized above, the TMB received a communication from Argentina, under Article 8.10, in which it conveyed its inability to conform with the recommendations the TMB had made that the safeguard measures introduced on imports from Brazil of products of categories 218, 219/220, 224, 313/317 and 613/617/627 should be rescinded. The TMB examined this matter at its meeting of December 1999, with the participation of representatives from Argentina and Brazil. The communication of Argentina provided six main reasons for its inability to conform with the recommendations of the TMB:

- Argentina considered that it had complied with the provisions of Article 6 and that the elements demonstrating the existence of serious damage caused by an increase in imports were contained in the presentation made at the time Argentina had requested consultation with Brazil;

- the analysis made by the TMB of the reasons put forward by Argentina to justify the application of a transitional safeguard measure, did not satisfy the provisions of Article 8.5 concerning the need to give the matter thorough consideration;

- the TMB, *inter alia*, by suggesting that statistical information should have been made available by Argentina in order to compare the data provided for the most recent period available (i.e. May 1998 to April 1999) to a similar preceding period, appeared to impose a standard of requirement far beyond what was prescribed in Article 6;

- the TMB's recommendation seemed to entail an increase of the Member's obligations under the ATC, as it inferred that an absolute increase in imports had to occur during the period referred to in Article 6.8 in order to be in a position to apply a safeguard measure pursuant to Article 6. According to Argentina, the period specified in

Article 6.8 was defined solely for the purposes of calculating the quantitative restriction should the Member conclude that it was necessary to apply a transitional safeguard measure;

- in categories 313/317 and 613/617/627, where its analysis had been a little more extensive, the TMB had preferred to attribute the damage caused to the domestic industry to factors other than imports without giving Argentina the opportunity to challenge this line of argument;

- Argentina's recourse to the provisions of Article 6.11, which demand the existence of "highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair" had been questioned by the TMB. Argentina believed that such a recourse had been justified by the circumstances, as it had been substantiated by the information Argentina had provided.

199. In giving thorough consideration to the reasons provided by Argentina, the TMB stated that in its examination of the measures, it had not challenged the compliance by Argentina with the provisions of Articles 6.1 and 6.6, nor with the procedural requirements of Article 6, but had examined the determination made by Argentina as to whether particular products 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. As to whether the analysis made by the TMB did or did not satisfy the provisions of Article 8.5, the TMB observed that Argentina had notified the safeguard measures under Article 6.11. The TMB also observed that Article 8.5 referred to situations where there was an "absence of any mutually agreed solution in the bilateral consultations provided for in this Agreement". Such situations were of a more general nature than those specifically envisaged in Article 6.11 where, in cases when the consultations envisaged in that same Article did not produce agreement, the TMB shall "promptly conduct an examination of the matter, and make appropriate recommendations to the Members concerned within 30 days". The TMB was of the view, however, that in its prompt examination of the matter it had given thorough consideration to it, as witnessed, *inter alia*, by the amount of time it had taken to conduct and to conclude the examination and by the detailed elements contained in the Body's report of that examination. Moreover, Argentina seemed to attribute the perceived lack of thorough examination of the matter to the TMB's decision not to continue the detailed analysis pursuant to Article 6.3 in those categories where it had found that imports had not been increasing. In this regard the TMB made the following observations.

200. The TMB recalled that Article 6.2 states that "[s]afeguard action may be taken under this Article when, on the basis of a determination by a Member, it is demonstrated 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" (emphasis added). It followed from this language that this condition had to be met at the time which was close to the one when a Member was requesting consultations pursuant to Article 6.7 with a view to introducing a safeguard action (or when it decided to take the safeguard measures provisionally pursuant to Article 6.11). This appeared not to be the case for categories 218, 219/220, 224 and 313/317. In emphasising in its report[87] that a determination of serious damage in the sense of Article 6 could not be based on developments that had affected the domestic industry years before the actual determination was being made, the TMB had stated that in examining such a determination, "… decisive guidance had to be provided by the developments which had occurred in the most recent period". The first basic precondition for applying a transitional safeguard measure as defined in Article 6.2 implied, in the view of the TMB, that imports (that may have started to increase in the past) should have increased in the period which is close to the time when the safeguard measure is being provisionally imposed or the request for consultations is being made. This also means that an absolute increase in imports is a necessary condition to be met. The best practical way to ascertain

[87] See G/TMB/R/58.

that the products were being imported in increased quantities was to observe whether imports had increased during the period referred to in Article 6.8. Following its finding that total imports had not increased in the recent period, the TMB could only conclude that these particular products were not being imported into Argentina in increased quantities close to the time when Argentina had requested consultations and introduced safeguard measures pursuant to Article 6.11. The TMB could not agree with Argentina that the standards applied by it entailed an increase of Argentina's obligations under the ATC. In addition, these standards corresponded to the ones adopted by the TMB in its previous examinations of measures referred to it under Article 6. Regarding the need to consider the increase in imports not only in absolute terms, but "also in relation to the parameters for determining the damage mentioned in Article 6.3", as claimed by Argentina, the TMB observed that the conditions defined in Article 6.2 did not allow for the application of transitional safeguard measures in cases where imports were declining, even though their share in the apparent market were increasing.

201. As to whether the TMB was required, or not, to continue the analysis provided for in Article 6.3 when it had established that imports had not been increasing in the recent period, the TMB noted that a determination of serious damage caused by increased quantities of imports was a staged process comprised of the following parts:

- verification of whether the product in question was being imported in increased quantities;
- determination of serious damage caused to the domestic industry;
- establishment of the causal link between the increased quantities of imports and the serious damage.

If any of the three conditions above had not been met, the safeguard measures could not be found to be justified in accordance with the provisions of Article 6 and, in such a case, the TMB, therefore, was not required to make findings and conclusions on all the three parts. This was in accordance with the practice established by the TMB.

202. Regarding the issue of data comparability, the TMB referred to the detailed explanation it had already provided during the examination of the same matter under Article 6.11. On the issue of whether damage claimed to the domestic industry could be attributed to imports or to some other factors, the TMB recalled that:

- in the factual information provided, Argentina itself had recognized that concepts such as recession and market penetration of imports had co-existed and were elements to be considered;
- a general contraction of the economy had been identified by the TMB as only one of the possible elements that could have affected the domestic industry. The TMB also observed that in its communication, made pursuant to Article 8.10, Argentina had not provided arguments that would have refuted the possible role and effect of difficulties of a structural nature and of possible business decisions. Noting that Argentina recognized that the due process had been observed during the TMB's examination of the matter pursuant to Article 6.11, the TMB expressed the view that, under Article 6, it was for the Member introducing a provisional safeguard measure to demonstrate that the serious damage claimed had been caused by increased quantities in total imports. In the view of the TMB, this statement also answered the contention of Argentina that it had not been given the opportunity to challenge certain lines of arguments adopted by the TMB.

203. The TMB noted the statement of Argentina that it had adopted a prudent position, and that developments in total imports "would have fully justified taking action earlier according to [Article 6]". The TMB understood that this statement was meant to justify the recourse to the provisions of Article 6.11 which requires the existence of "highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair". The TMB observed that it was difficult to reconcile Argentina's contention that the changes in the economic variables had taken place over several years with the provisions requiring "highly unusual and critical circumstances". In this connection, the TMB continued to be of the view that, in cases where the provision of Article 6.11 were to be invoked, the expectation was that the elements envisaged in Articles 6.2, 6.3 and 6.4 would indicate as unambiguously as possible the highly unusual and critical nature of the circumstances. The TMB was of the view that unless such circumstances were met, any action taken under Article 6 should be preceded by consultations between the parties.

204. On the basis of the above considerations, the TMB concluded that the reasons given by Argentina did not lead it to change the conclusions and recommendations arrived at during its examination of the measures pursuant to Article 6.11. The TMB recommended, therefore, that Argentina reconsider its position and that the transitional safeguard measures introduced provisionally by Argentina on the imports from Brazil of products of categories 218, 219/220, 224, 313/317 and 613/617/627 be rescinded forthwith.

205. In February 2000, Brazil, noting that the matter remained unresolved, requested the establishment of a panel pursuant to Article XXIII of GATT 1994, Article 6 of the Understanding on Rules and Procedures Governing the Settlement of disputes (DSU) and Article 8 of the Agreement on Textiles and Clothing (ATC).[88] The Dispute Settlement Body established the Panel at its meeting in March 2000. On 27 June 2000, Argentina and Brazil notified jointly a mutually agreed solution[89] which stated that Argentina had withdrawn the transitional safeguard measures on imports of textile products of categories 218, 219/220, 224, 313/317 and 613/617/627 that were subject to recommendations of the TMB. Therefore, Brazil and Argentina agreed to suspend, for a period not exceeding 12 months, the procedures for the composition of the Panel. It was also agreed that, within the next 12 months, the complaining party would retain the right to resume the procedures for the composition of the Panel from the point where it stood.

(ii) *Pakistan*

206. In August 1999, Argentina requested consultations with Pakistan, pursuant to Article 6.11, and introduced provisionally, with effect from 31 July 1999, a transitional safeguard measure for a duration of three years on imports of woven fabrics of cotton and cotton mixtures, consisting of five quotas on imports from Pakistan of products of categories 218 (woven cotton and cotton mixtures fabrics of yarns of different colours), 219/220 (duck/special-weave cotton and cotton mixtures fabrics), 224 (pile tufted cotton and cotton mixtures fabrics), 313/317 (sheeting/twill cotton and cotton mixtures fabrics) and 613/617/627 (sheeting fabrics/twill and satin/staple-filament fibre combinations of cotton and cotton mixtures). Consultations were held between the two Members, which did not result in a mutual understanding as to whether the situation called for restraint on the imports of the above-mentioned products.

207. In mid-November 1999, Pakistan notified to the TMB, pursuant to Article 6.11, that these consultations had not resulted in agreement and requested the TMB to examine the matter and make appropriate recommendations in accordance with Article 6.11. Though, under normal circumstances, the review of the measures should have taken place at the TMB's December 1999 meeting, Pakistan requested that this item be placed on the agenda of the TMB's January 2000 meeting, due to certain difficulties concerning its delegation's availability at the December meeting.

[88] See WT/DS190/1.
[89] See WT/DS190/2.

208. The TMB examined the matter at its meeting in January 2000. In starting its examination, it recalled that similar measures affecting products of the same product categories had been taken provisionally by Argentina, for the same period and pursuant to the same provisions of the ATC, against imports of these products originating in Brazil. The TMB noted that the factual information provided by Argentina pursuant to Article 6.7, when it had invoked the provisions of Article 6.11 *vis-à-vis* Pakistan, was the same as that which had been provided when it had invoked the provisions of Article 6.11 *vis-à-vis* Brazil. The TMB also recalled that the measures introduced provisionally on imports from Brazil had already been examined in detail by the Body, first pursuant to Article 6.11 and, subsequently, pursuant to Article 8.10.

209. Having examined, *inter alia*, the arguments put forward by Argentina and Pakistan in this regard, the TMB agreed with Pakistan that, as far as categories 218, 219/220, 224 and 313/317 were concerned, in re-examining the determination of serious damage caused by total imports to the Argentinian domestic industry producing like and/or directly competitive products on the basis of the same factual information, the Body would reach the same conclusions. Consequently, it was not necessary for the TMB to proceed to a more detailed examination regarding these categories. The TMB, therefore, recalled the conclusions it had reached when it had examined the measures applied by Argentina on imports from Brazil of products of categories 218, 219/220, 224 and 313/317, and decided not to undertake any further examination of the measures affecting imports of the products of these categories.

210. The TMB held the view, however, that the same did not apply to the measure affecting imports of the products of category 613/617/627. It was recalled in this regard that, in examining the determination made by Argentina of the serious damage caused to the domestic industry by increased quantities of imports, the TMB had reached preliminary conclusions but, as reflected in the report adopted by the Body, "[t]he TMB did not make a final determination as to whether increased imports of products of category 613/617/627 had caused serious damage to the domestic industry producing like and/or directly competitive products". In this particular case, the TMB had reached conclusions and adopted a recommendation on the basis of additional considerations which, at least at first sight, would not necessarily be applicable to the measure affecting imports from Pakistan. Therefore, the TMB concluded that, in the case of this category, it could not simply reconfirm outright the conclusions and recommendation already made when it had examined the measure taken on imports from Brazil and decided to proceed to its examination of the measure taken *vis-a-vis* Pakistan.

211. The TMB, observed that there had been an increase in the quantity of total imports during the periods for which comparable data had been made available and that this trend had been continuous since 1995, though since 1998 the rate of increase in imports had started to decelerate. The Body, therefore, conducted an examination of the possible effects of the increased imports on the state of the domestic industry, as reflected in changes in the economic variables listed in Article 6.3 and in the other indicators reported by Argentina. It concluded that the Argentinian industry producing products of category 613/617/627 had been affected by unfavourable developments and that the difficulties experienced did not seem to be over. The TMB recalled that, in examining the safeguard measure affecting imports of these products from Brazil, it had reached the preliminary conclusion that the difficulties facing the Argentinian industry could arise from multiple reasons having a mutually reinforcing effect, these possible reasons being:

- a potential serious damage caused by increased quantities of imports;
- difficulties of a structural nature;
- possible business decisions taken by the integrated industry, such as shifting the production to other lines, or reduced demand of further processed products, for which the products of category 613/617/627 were an input;

- a general contraction of the economy resulting from a recession.

212. With a view to reaching a definitive conclusion whether imports had been the primary cause for the industry's difficulties, the TMB decided to reflect further on the arguments reflected in the 2nd to 4th indents above. It assumed that when the economy contracts, consumption, output as well as imports tend to decline, and as a result of the decrease in imports, serious damage in the sense of Article 6 cannot be demonstrated. In the present case, however, consumption remained relatively stable and output dropped significantly, while imports continued to increase. Therefore, the recession affecting Argentina's economy could not explain the difficulties experienced by the domestic industry producing category 613/617/627 products. The TMB also noted that in response to problems, perhaps also of a structural nature, the Argentinian industry had already made efforts to adjust, but the continued growth in imports had not made it possible as yet to achieve a more lasting reversal of the unfavourable trends. Furthermore, in the view of the TMB, an analysis of the information and data related to the five product categories subject to the provisional safeguard measures could not lead to a conclusion that a possible shift in the production among these products would explain the difficulties experienced by the industry producing category 613/617/627 products. Also, there was no evidence to suggest that a possible shift to the production of goods other than those subject to the provisional safeguard measures could be held responsible for the overall state of the domestic industry producing this category of products.

213. On the basis of the above considerations, the TMB reached the conclusion that the difficulties identified with respect to the domestic industry producing category 613/617/627 products had been caused by the increased quantities in imports. The TMB, therefore, determined, pursuant to Articles 6.2 and 6.3, that the increased imports of products of this category had caused serious damage to the domestic industry producing like and/or directly competitive products.

214. The TMB next turned to the examination of the determination made by Argentina according to which the serious damage caused by increased total imports of category 613/617/627 products could be attributed, *inter alia*, to the imports originating in Pakistan. The TMB found that there had been a sharp and substantial increase in imports from Pakistan and that these imports held a majority share in total imports as well as an increasing share of the Argentinian apparent consumption. Also, the average price of the imported goods from Pakistan was below the average domestic price prevailing for Argentinian products. Recalling that, according to Article 6.4, none of the above-listed factors, either alone or combined with other factors, can necessarily give decisive guidance in determining the attribution of serious damage to a Member, the TMB reached the overall conclusion that the serious damage caused to the Argentine industry producing products of category 613/617/627 could be attributed, *inter alia*, to imports from Pakistan. As regards the recourse by Argentina to the provisions of Article 6.11, the TMB recalled that it had already addressed in detail the issue of recourse to Article 6.11 during the examination of the safeguard measure applied on imports of the same products from Brazil. On these occasions, the Body had already found that the recourse by Argentina to Article 6.11 had not been appropriate. Having addressed this aspect in further detail, the TMB continued to be of the view that Argentina's recourse to the procedures laid down in Article 6.11 had not been appropriate. Whether such an inappropriate recourse to Article 6.11 could invalidate a transitional safeguard measure or not, was, in the view of the TMB, a decision to be taken case by case, on the basis of the consideration of all the relevant elements involved. In the present case, the TMB found, on the one hand, that serious damage caused by increased imports had been demonstrated and that it could be attributed, *inter alia*, to imports from Pakistan. Furthermore, the procedural requirements under Article 6.11 had been met. On the other hand, the detailed examination of the determination of serious damage as well as the lack of convincing explanations, pursuant to Article 6.11, revealed that the recourse to this provision, i.e. to apply the restraint provisionally, without having exhausted the possibility of prior consultations, had not been justified. The TMB came to the overall conclusion, however, that in this particular case the inappropriate recourse to Article 6.11, although it constituted an important shortcoming, would not lead to the conclusion that the safeguard measure should be rejected on that basis.

215. With respect to imports of products of categories 218, 219/220, 224 and 313/317, the TMB reiterated its previous conclusions that Argentina had not demonstrated that such products were being imported into Argentina, at the time it had decided to introduce the safeguard measures pursuant to the provisions of Article 6.11, in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. The TMB recommended, therefore, that Argentina rescind the provisional safeguard measures introduced on imports of these products from Pakistan. As regards imports of products of category 613/617/627, the TMB concluded that it had been demonstrated that such products were being imported into Argentina, at the time Argentina had decided to introduce a safeguard measure pursuant to the provisions of Article 6.11, in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products. The TMB found also that the serious damage caused to the Argentinian industry could be attributed, *inter alia*, to increased imports from Pakistan. The TMB noted, however, that the Argentinian industry producing products of category 613/617/627 had already started to make adjustments and that these efforts had already produced temporary results, such as a slight increase in output in 1997. Hence, the TMB was of the view that a shorter period of time than the maximum timeframe envisaged in Article 6.12(a) seemed to be sufficient for the Argentinian industry to adjust. Therefore, the TMB recommended that Argentina rescind the transitional safeguard measure on imports from Pakistan of category 613/617/627 products by 31 January 2001, i.e. after 18 months of application.

216. At its meeting of March 2000, the TMB took note of a communication by Argentina that it intended to comply with the recommendations made by the TMB regarding the transitional safeguard measures applied, pursuant to Article 6.11, to imports of woven fabrics of cotton and its mixtures originating in Pakistan (categories 218, 219/220, 224, 313/317 and 613/617/627). At its meeting in June 2000, the TMB took note of a communication received from Argentina transmitting a resolution of the Argentinian Ministry of the Economy and Public Works and Services implementing in full the above-mentioned recommendations.

(c) Imports of woven fabrics of synthetic filament, whether or not impregnated (categories 229/629, 619 and 620) from Korea

217. The TMB received a communication from Korea referring to the transitional safeguard measure applied provisionally by Argentina, pursuant to Article 6.11, and taking effect from 29 October 1999 for a duration of three years, on imports of woven fabrics of synthetic filament, whether or not impregnated. This safeguard measure consisted of three quotas, on products of categories 619 (woven fabrics of pure polyester filament), 620 (other woven fabrics of synthetic filament) and 229/629 (special woven fabrics/other woven fabrics of mixed filaments). The bilateral consultations between Korea and Argentina had not produced agreement and Korea requested that the TMB examine the matter and make appropriate recommendations. The TMB had scheduled to conduct this examination during its March 2000 meeting and had invited the participation of representatives from both Argentina and Korea. However, the TMB subsequently received a further communication from Korea requesting it to defer its examination of the matter until a further communication was made, in view of the fact that the consultations had resumed between Korea and Argentina. The TMB took note of this request. On 31 March 2000, Korea further communicated to the TMB that the resumed bilateral consultations had failed to produce agreement and, thus, requested that the TMB examine the matter, and make appropriate recommendations, in accordance with Article 6.

218. The TMB examined the safeguard measure at its meeting of April 2000, with the participation of representatives of the two Members. The TMB considered that before embarking, in accordance with Articles 6.2, 6.3 and, if appropriate, 6.4, on a systematic examination of the safeguard measures applied provisionally by Argentina, it would be necessary to address certain procedural and substantive aspects involved in these cases, also in the light of some of the arguments raised by Korea, applicable to all the three categories. First, the TMB addressed the question of compliance with the

deadlines specified in Article 6.11. The TMB observed in this respect that the resolution establishing the safeguard measures had entered into force on 29 October 1999 and that the respective request for consultation and the notification to the TMB had been effected on 5 November 1999 which was within the deadline of "no more than five working days after taking the action". The TMB further observed, *inter alia*, that Argentina had not submitted any notification regarding the outcome of the consultations required in Article 6.11, either before or after the expiration of the relevant deadline, while Korea had requested the TMB to examine the matter pursuant to the provisions of Article 6 more than two months after the expiration of 60 days from the date of the implementation of the safeguards. Thus, the respective deadline had not been respected by either of the two Members and this, in the view of the TMB, gave rise to concerns.

219. Second, the TMB addressed the question of the time-period covered by the factual information and data provided by Argentina and related issues. The TMB, *inter alia*, noted the argument of Korea that there had been a five-month gap between the end of the period investigated and the application of the safeguard measures. Korea held the view that, as a result of this gap, Argentina had failed to establish the substantial increase in imports in the sense of Article 6.2 and had violated the provisions of Article 6.7. Also, the specific and relevant factual information provided by Argentina had not established that the domestic industry had suffered from serious damage, because this information could not reflect the situation of the industry at the time of the introduction of the safeguard measures. With reference to the five-month gap between the end of the period investigated and the provisional application of the safeguard measures in question, the TMB considered that it would be inappropriate for it to comment on the internal administrative procedures involved in any Member's recourse to the provisions of the ATC. The Body observed, however, that possible delays in taking decisions, as a result of such procedures, could have an impact on the findings and conclusions the TMB could reach, in accordance with the provisions of the ATC, regarding the justification of the measures in question or aspects thereof. As regards the time-period covered by the factual information submitted by Argentina, the TMB continued to be of the view that the best practical way to ascertain that the products were being imported in increased quantities was to observe whether imports had increased during the period referred to in Article 6.8. In the present case, Argentina submitted data regarding developments in total imports as well as the economic variables listed in Article 6.3 for four calendar years (1995 to 1998) and in addition, for two rolling-year periods (June 1997 to May 1998 and June 1998 to May 1999). In the view of the TMB, Argentina should have provided in the relevant factual data information at least with respect to the developments in total imports and imports from Korea for the period August 1998 to July 1999. At the same time, the TMB recognized that the formulation of Article 6.7 (i.e. that the information shall be related as closely as possible to the reference period) permitted certain flexibility in providing information on the different economic variables listed in Article 6.3, depending on the availability of the relevant data and information. However, the safeguard measures in question had been applied by Argentina pursuant to the provisions of Article 6.11, which required the existence of "highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair". The TMB was of the view that the existence of such circumstances could only be proven if information were provided regarding developments which occurred in the very recent period, i.e. during or very close to the reference period.

220. As to Argentina's recourse to the procedures of Article 6.11, the TMB, considering the view expressed by Korea that Argentina had not demonstrated that the situation its industry was facing was that of "highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair", observed that on a number of occasions, in the context of earlier examinations of recourses to the provisions of Article 6.11, the Body had already made a number of observations which had defined the TMB's attitude towards the examination of similar cases. Though some aspects affecting also the recourse to Article 6.11 had already been addressed (as above), the TMB was of the view that, like in any other case involving the use of the provisions of this Article, substantive aspects of such a recourse and their possible implications on the conclusions to be

reached, would have to be taken up in the context of the detailed examination of the three restraints provisionally applied.

221. The TMB turned to the detailed examination of the safeguard measures category by category. With respect to products of category 229/629, it could be established that the volume of total imports of these products had significantly increased during the period investigated, though it appeared that this increase had decelerated in the most recent period for which data were available. The TMB, therefore, examined in detail the possible effects of increased imports on the state of the Argentine industry, as reflected in the changes of the economic variables listed in Article 6.3. In its overall assessment, the TMB recognized that the factual information submitted by Argentina revealed a domestic industry facing difficulties. In particular, it appeared from the data that some of the difficulties experienced by the domestic industry had started in 1997 and accentuated in 1998. An analysis of the changes that occurred in 1998, pointed to a situation where the domestic industry could suffer serious damage as a result, *inter alia*, of increased imports. However, during the latest period for which comparable data had been provided, i.e. June 1998-May 1999, imports continued to increase, but at a slower rate, and while output declined further, the decrease of the domestic sales of local output significantly slowed down. Furthermore, as the information at the Body's disposal did not go beyond May 1999, the TMB had no knowledge of the developments that had taken place in June and July 1999, a period which was part of the reference period set out in Article 6.8. There were indications, however, that total imports slowed down further in June-July 1999. Against this background, the TMB came to the conclusion that the overall situation in the most recent period had not been characterized by the existence of highly unusual and critical circumstances, where delay in taking the action would have caused damage which would be difficult to repair. The difficulties experienced by the industry had started earlier and the situation, overall, had not worsened during the latest period. At the end of July 1999, the data available for June 1998-May 1999 had not substantiated the existence of highly unusual and critical circumstances. The TMB observed that though Argentina had decided to apply the measure provisionally pursuant to the provisions of Article 6.11, it had not provided any explanation or information in the relevant factual data which would call into question the above conclusion.

222. The TMB recalled that in examining a previous case involving recourse to the provisions of Article 6.11 it had stated, *inter alia*, the following: "[w]hether … an inappropriate recourse to Article 6.11 can invalidate a transitional safeguard measure or not, was, in the view of the TMB, a decision to be taken case-by-case, on the basis of the consideration of all the relevant elements involved" (*emphasis added*).[90] In the present case, the TMB, in its thorough analysis of the developments affecting the Argentinian industry, was unable to identify any significant element of the case where it could be found that the situation corresponded to the circumstances defined in Article 6.11.

223. The TMB concluded that Argentina had not demonstrated successfully that the products of category 229/629 were being imported into Argentina in the reference period in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products and, in particular, as to substantiate the highly unusual and critical circumstances where delay would cause damage that would be difficult to repair. The TMB recommended, therefore, that Argentina rescind the safeguard measure applied provisionally on imports of these products originating from Korea.

224. With respect to products of category 619, it could be established that the volume of total imports of these products had significantly increased during the last period for which comparable data had been made available by Argentina in the factual information and that this significant increase had been continuous throughout the period investigated. Also, with a view to refuting possible statements that this trend could be reversed if one considered developments during the reference period, the

[90] G/TMB/R/61, paragraph 55.

representative of Argentina provided import data, during the TMB's deliberations, for the period August 1998 to July 1999 and the corresponding previous period, showing that total imports had increased by roughly 22 per cent during this most recent period. The TMB, while emphasising that it had to rely essentially on the information that had been made available pursuant to Article 6.7 when the request for consultations had been made, noted that this additional information did not call into question the conclusion it had reached above. In the period August 1998 to July 1999, though the rate of increase in total imports had started to decelerate, the increase remained substantial.

225. After having examined in detail developments related to the different economic variables listed in Article 6.3, the TMB, in its overall assessment, recognized that the factual information submitted by Argentina revealed a domestic industry facing serious difficulties which could have begun earlier, but which had become accentuated as from the beginning of 1998. A thorough analysis of changes, in particular in output, domestic sales of local production, market share, inventories and domestic prices on the one hand, and in the volume of imports and their price level, on the other, revealed a situation where the domestic industry had been suffering serious damage as a result of increased imports. It could be concluded, therefore, that Argentina had successfully demonstrated that increased imports of products of this category had caused serious damage in 1998 and in June 1998-May 1999 to the Argentinian domestic industry producing like and/or directly competitive products.

226. Therefore, the TMB proceeded to the examination of the attribution of serious damage to imports from Korea and considering all the elements at its disposal, the Body concluded that the serious damage experienced by the domestic industry of Argentina in 1998 and during the 12 months ending May 1999 could be attributed, *inter alia*, to imports originating in Korea.

227. Recalling that Argentina had decided to apply provisionally the safeguard measure on imports from Korea pursuant to Article 6.11, the TMB came to the view that at the end of July 1999 the existence of the highly unusual and critical circumstances had been demonstrated on the basis of data covering the period June 1998-May 1999. Practically all the elements examined supported such a conclusion: the sharp and continuous rise of imports, both from all sources and from Korea; the significant and continuous decline of output and domestic sales of local production, while consumption continued to increase dynamically; the decline in productivity and employment; the low rate of utilization of capacity and, not least, the important pressure import prices put on the domestic market. All these, i.e. the elements envisaged in Articles 6.2, 6.3 and 6.4, seemed to indicate without ambiguity the existence of the highly unusual and, in particular, the critical nature of the circumstances. The TMB was aware, however, that this first finding made by the competent Argentinian authority had been transformed into a decision of the Government of Argentina only three months later and, in view of lack of relevant updated information the Body could not assess whether (and to what extent) the highly unusual and critical circumstances had continued to exist close to the time when the decision had been taken by the Government. Given the difficulties the industry had been facing at the end of May 1999, and considering that the period June-July 1999 could be, in any case, too short to halt and reverse the overall very serious situation, the TMB accepted that the recourse of Argentina, in this particular case, to the provisions of Article 6.11 had been justified.

228. The TMB noted that the gap of three months between establishing the existence of highly unusual and critical circumstances and taking the formal action could have implications on substantive elements involved in the safeguard measure in question. Had Argentina applied the urgent procedure foreseen in Article 6.11 properly, the restraint on imports from Korea, pursuant to the provisions of Article 6.8, should have been fixed at a level not lower than the level of imports from Korea during the period June 1998-May 1999, which amounted to 4,868,640 kg. However, the quota established by Argentina was of 3,701,667 kg., i.e. 24 per cent below the minimum level otherwise applicable during the reference period. The TMB recommended, therefore, that:

- Argentina increase the level of the restraint during its first year of application to a level not lower than 4,868,640 kg.; and

- should the restraint remain in place for more than one year, the provisions of Article 6.13 be fully implemented by Argentina.

229. As regards products of category 620, it could be established, on the basis of the information supplied by Argentina in the factual information referred to in Article 6.7, that the volume of total imports of these products had significantly increased from 1995 to 1996 and from 1997 to 1998. However, the rate of increase had been much smaller in the latest period for which comparable data were available. After having conducted a detailed examination, pursuant to Article 6.3, the TMB made the overall assessment that the state of the industry producing category 620 products revealed a domestic industry facing difficulties. These difficulties were reflected, in particular, in developments regarding output, domestic sales of local production, inventories, market share and exports. In examining in detail all the related information provided by Argentina and the arguments raised by Korea, the TMB came, however, to the view that Argentina had failed to demonstrate a causal relationship between the state of the domestic industry and the increased quantities in total imports, in particular in view of the only slight increase in imports registered during the most recent period for which comparable data were available and also of the fact that imports appeared to have decelerated since the beginning of 1999. It appeared to the TMB that the industry's difficulties could stem from problems which had already existed in 1995 (or perhaps even earlier), as evidenced by the fact that domestic output had not increased at all during the period investigated. Also, though not formally examining, pursuant to Article 6.4, the attribution of the serious damage claimed to imports from Korea, the TMB also noted, in particular in the context of a safeguard measure introduced provisionally under the provisions of Article 6.11, that during the 12-month period ending May 1999, imports from Korea had not shown a sharp and substantial increase, since they had only increased by 4 per cent (whereas the overall increase in total imports was 8 per cent). In reaching these conclusions, the TMB also found that the recourse to the procedures of Article 6.11 by Argentina had not been appropriate in this particular case. Nothing in the factual information provided by Argentina had substantiated the existence of highly unusual and critical circumstances in the most recent period, where delay would cause damage which would be difficult to repair. The TMB reiterated its views, expressed on earlier occasions, regarding the invocation of the provisions of Article 6.11. On the basis of its detailed examination, the TMB concluded that Argentina had not demonstrated successfully that products of category 620 were being imported into Argentina in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products. This also implied that Argentina's recourse to the procedures of Article 6.11 had not been appropriate. The TMB recommended, therefore, that Argentina rescind the provisional safeguard measure applied on imports of these products from Korea.

230. At its meeting of July 2000, the TMB observed, with reference to Article 8.9, that it had not as yet received any official information from Argentina on the implementation of the recommendations the Body had made, as a result of its examination of the transitional safeguard measure applied provisionally by Argentina pursuant to Article 6.11, with effect from 29 October 1999, on imports from Korea of woven fabrics of synthetic filament, whether impregnated or not, consisting of three quotas on products of categories 619, 620 and 229/629. The TMB decided to request information from Argentina on the implementation of these recommendations. At its subsequent meeting, the TMB took note of communications received from Argentina transmitting a Resolution of the Ministry of the Economy. This Resolution eliminated the restraints imposed on imports from Korea of products of categories 620 and 229/629 and increased the level of the restraint for products of category 619 during its first year of application to a level of 4,868,640 kg. Furthermore, the Resolution also provided for an annual increase of that level of 6 per cent for the subsequent years, in accordance with Article 6.13. This resolution implemented in full the relevant recommendations made by the TMB.

C. CONCLUSIONS ADOPTED BY THE CTG IN FEBRUARY 1998 IN ITS FIRST MAJOR REVIEW

231. The conclusions of the CTG of its major review of the implementation of the ATC during the first stage of the integration process contain the following:

> "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.
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> 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.
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> […]
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> 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."[91]

D. VIEWS AND COMMENTS OF WTO MEMBERS IN RESPONSE TO THE TMB'S GENERAL REQUEST FOR INFORMATION

232. In their response to the TMB's request for information and comments in the context of the preparation of the present report, the ITCB members stated that "the TMB may note the deceleration of safeguard actions by restraining Members. However, we hope that the report brings out the fact that a restraining Member refused to accept a TMB recommendation to withdraw the measure. While the exporting Member concerned requested a dispute panel to rule on the conformity of the measure, the restriction remains in place damaging its access opportunities. It is also our strong expectation that the TMB emphasize the importance of following the guidelines emanating from dispute settlement panels and the Appellate Body". The same contribution recognized "the improvement in the transparency of TMB findings during the second stage, particularly as concerns the review of safeguard actions. It needs, however, to be pointed out that its findings and reports have not always been consistent. Thus, for example, while it found certain actions to be inconsistent with restraining Member's obligations, another action taken on the same basis was declared to be justified. And the TMB neglected to rectify the error".

233. In its response to the TMB's request for information and comments in the context of the preparation of the present report, Canada stated that it had not made use of the transitional safeguard of Article 6. Similarly, the European Community stated that it had not had recourse to the provisions of Article 6 of the ATC.

E. THE TMB'S COMMENTS AND ASSESSMENTS OF THE APPLICATION OF THE TRANSITIONAL SAFEGUARD MECHANISM DURING THE SECOND STAGE OF THE INTEGRATION PROCESS

234. An assessment of the use of the provisions of the transitional safeguard mechanism during the second stage of the integration process should be started by briefly recalling, as a background, the facts that characterized developments in this area during the first stage of the integration process. During the period covered by the TMB's first comprehensive report (1 January 1995 to end of July 1997), two Members invoked the provisions of Article 6, involving 33 cases in total.[92] A breakdown of such invocations by quarters showed the following pattern[93]:

Year	Quarter	Requests	Invoking Member
1995	First quarter Second quarter Third quarter Fourth quarter	10 requests 14 requests none none	United States United States
1996	First quarter Second quarter Third quarter Fourth quarter	1 request 7 requests none none	United States Brazil
1997	First quarter Second quarter	none 1 request	 United States
TOTAL		33 requests	

235. As can be seen from the above breakdown, the bulk of the requests for consultations (altogether 24) was concentrated in the first half of 1995, and thus coincided with the entry into force of the ATC and the other Uruguay Round agreements. As already observed by the TMB, this

[91] See G/L/224.
[92] See paragraphs 119 and 120.
[93] See G/L/179, paragraph 173.

concentration in terms of timing and, in particular, the large number of cases, caused serious concerns to certain Members, as expressed by them in the TMB, as well as to a number of others, as expressed in the CTG.[94] In addition, the examination of the requests for consultations and of the resulting measures made by the TMB and, in some cases, subsequently, DSB panels, led to the conclusion that, in most cases, the United States had not complied with important obligations arising from Article 6.[95]

236. Against this background, the recourse to the provisions of Article 6 since the adoption of the TMB's first comprehensive report can be summarized as follows:

Period		Invoking Member	Number of Requests for Consultations (*together with provisional application under Article 6.11)
1997	Second half	United States	1
1998	First half	Colombia	5
	Second half	Colombia	4
	Second half	United States	1
1999	First half	Poland	1
	First half	Argentina	4
	Second half	Argentina	13*
2000	First half	None	None
	Second half	None	None
2001	First half	Poland	1
Total:			30
of which during Stage 2:			29

237. As also reflected in the overview above, since the beginning of the implementation of the second stage of the integration process, recourse to the provisions of Article 6 has been made in altogether 29 cases. Four Members invoked these provisions (Argentina – 17 cases; Colombia – 9 cases; Poland – 2 cases; United States – 1 case). While the number of requests for consultation was non-negligible (altogether 10) in 1998, this was followed by a further increase (18 cases) in 1999 and the decision by one Member to apply provisionally, with immediate effect the restraint measures in 13 cases. As regards the number of safeguard measures which were actually introduced and subsequently maintained, the picture is more nuanced. Of the 10 cases initiated in 1998, no measure was taken, after consultations conducted pursuant to Article 6.7, in five cases (Colombia). In two further cases (Colombia), the restraints introduced were eliminated following the recommendations made by the TMB. In the three remaining cases (Colombia – 2 and United States - 1), the Members concerned decided to maintain the measures in place, despite the recommendations of the TMB. In two of these cases (Colombia), the restraints were abolished after one year of application, while in the third case (United States), though it was maintained, the recently circulated report of the Panel largely confirmed and upheld the conclusions reached by the TMB. The Panel recommended that the United States bring the measure at issue into conformity with its obligations under the ATC and suggested that this could be best achieved by prompt removal of the import restriction.[96] In this regard, the TMB also noted that under the ATC, Members shall endeavour to accept in full the recommendations of the TMB, which is not a legal obligation to fully comply with them. Notwithstanding this, the adverse effects on trading opportunities of all these cases where the Members concerned continued to maintain the restrictions, despite the recommendations made by the TMB, should not be ignored. As regards development concerning the 18 cases initiated in 1999, no measure was taken after consultations with the Members affected in five cases (Argentina – 4 and Poland – 1), while of the 13 measures (Argentina), provisionally applied under Article 6.11, 11 were

[94] See G/L/179, paragraph 175.
[95] Ibid, paragraph 176.
[96] Subsequently, on 9 July 2001, the United States appealed certain issues of law covered by the Panel report and certain legal interpretations developed by the Panel.

subsequently rescinded[97] in conformity with the TMB's recommendations, one was rescinded after 18 months of application (again in accordance with the TMB's recommendation), whereas another continues to be maintained (*albeit* with a significantly higher level of restraint, as recommended by the TMB).

238. It is important to note that the main user of the provisions of Article 6 during Stage 1 has not had frequent recourse to them during Stage 2, and that the other user of these provisions did not have recourse to them at all during Stage 2. It is also noteworthy that the three other Members concerned, which had retained their right under Article 6.1, did not have recourse to the provisions of Article 6 prior to Stage 2. The TMB noted the shift in terms of the Members having recourse to these provisions. No recourse was made to the provisions of Article 6 in 2000, while one request for consultations was made during the first six months of 2001. The TMB observed, therefore, a substantial decline in the use of the transitional safeguard mechanism as from the beginning of the year 2000. In this light, it can be noted that there has been a noticeable deceleration of the recourse to the provisions of Article 6 during the whole period covered by the present comprehensive report.

239. There are certainly multiple possible reasons and explanations for this trend of deceleration in the use of the transitional safeguard mechanism. While the sustained growth in the world economy, up until the last quarter of 2000, may have also played a considerable role, the disciplines embodied in and the control exercised by the WTO system has made, in the view of the TMB, a significant contribution in this regard. The dispute settlement system, through the respective panel and Appellate Body reports, has set jurisprudence, provided detailed guidelines to Members and established appropriate standards on which the TMB has been able to rely, or from which it has been able to take further inspiration.

240. Against the background of difficulties in this area experienced by the TMB during the early part of the ATC implementation, and of the related concerns expressed by WTO Members, the TMB believes that the significant improvement in the Body's performance that has been achieved over time and that manifested itself during Stage 2 should be noted. The TMB applies tight, credible and transparent standards in examining all the safeguard measures referred to it under the provisions of Article 6, and subsequently, if applicable, under Article 8.10. It conducts very thorough and detailed examinations in each and every case, considers in full the arguments presented by the respective Members and measures them very carefully, together with the evidence presented, against the requirements embodied in the applicable provisions of the ATC. It also appears that the examination of the different cases, each of them on their own merit, has brought out certain methodological, procedural and substantive aspects, regarding which the position taken by the TMB, in the respective cases, can be viewed as providing further guidance for both WTO Members and the Body in the future. The TMB considers that its record over time has significantly improved in terms of efficiency and transparency. In an average case, when dealing with a transitional safeguard measure or a set of such measures as a dispute, either under Article 6 or Article 8.10, usually over a period of three to five days, full opportunity has been provided to the WTO Members concerned to present their respective case and arguments, and to answer the questions posed by the members of the TMB. Subsequently, the Body conducted a detailed examination, reached agreement on the findings, conclusions and on the recommendation and, finally, examined and adopted a relatively detailed report, together with the conclusions and recommendations. Such reports were subsequently circulated to WTO Members, for their information, in a matter of days. Representatives of the WTO Members involved in these cases could be present throughout the Body's deliberations and, with the exception of the final drafting stage, could make interventions related to any aspect of the matter which was under examination. The reports adopted in such cases provided full details of the arguments presented by the parties, a detailed summary of the different steps and elements involved in

[97] In five out of these 11 cases, the measures were rescinded only after the formal decision taken by the DSB to establish a dispute settlement panel.

the Body's examination together with its observations, findings and recommendations, and the common rationale behind them all.

241. It should be also observed that though there were a few exceptions, Members' implementation of the TMB's recommendations has shown a relatively good record. This, in the view of the TMB, can be attributed, among other things, to the thorough process of examination, to the consistently applied standards of review and also to the transparency related to all these activities of the Body. It also deserves mentioning that, pursuant to Article 8.9, the TMB made the utmost efforts to exercise proper surveillance of the implementation of its recommendations.

242. In reflecting on the comments made by ITCB Members about the consistency of the TMB's reports and in particular on the case which was specifically referred to by them in their submission[98], the TMB observes that the arguments included in paragraph 145 above would not only provide an adequate background but would also, at least in part, answer the concerns expressed. Furthermore, as to whether or not the TMB "neglected to rectify the error", as stated in the submission in question, it was observed that:

- the Member which was party to the agreement of the restraint in question (Thailand), has not brought any perceived problem to the TMB's attention either with respect to the TMB's overall examination and findings, or regarding the specific issue (definition of domestic industry);

- the ATC does not provide for the re-examination and re-opening of the conclusions reached by the TMB in its examination of measures referred to it under Article 6, unless a Member, pursuant to Article 8.10, considers itself unable to conform with the recommendations made.

The TMB is of the view that the two specific cases referred to the Body should be seen in their sequence, and that the specific provisions of the ATC under which they had been examined, as well as the lack of any indication from the Member affected should also be taken into consideration. In view of this, and keeping also in mind the possible legal implications of re-opening a case on its own initiative, the TMB cannot agree with the particular comments made in this regard.

243. In conclusion, the TMB recalled the conclusions adopted by the CTG in February 1998, which stated, *inter alia*, the following: "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".[99] It can be observed that developments in this regard during Stage 2, in particular as from the beginning of 2000, corresponded to a large extent to the Council's statement.

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

244. The ATC is intended to permit a progressive transition from an initial situation of a wide network of trade restrictions to one in which solely the rules and disciplines of GATT 1994 apply. This involves the elimination of all the restrictions maintained under the 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[100] (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

[98] See paragraph 232.
[99] See paragraph 231.
[100] For these latter restrictions, see paragraphs 355 to 362.

restrictions in place on 31 December 1994, 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".

245. The universe of the restrictions notified under 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 export opportunities in the product concerned (the growth provision). This is an automatic process which goes in parallel with the progressive integration, since as from the very beginning of each stage of integration, an increased growth rate had to be or has 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). This level had to be increased annually by not less than the initial growth rate under the MFA regime, increased by 16 per cent during Stage 1 (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)). The respective flexibility provisions which are essentially the same as provided for under the MFA 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 the administration of the restrictions (i.e. essentially the allocation and distribution of licences among potential suppliers) is done by the exporting Members[101], 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 provisions under Article 2. The supervisory role of the TMB, with the task of keeping under review the implementation of Article 2, is defined in Article 2.21.

A. SCOPE OF THE RESTRICTIONS TAKEN OVER FROM THE MFA REGIME: STATUS AND DEVELOPMENTS DURING THE FIRST STAGE OF THE INTEGRATION PROCESS

246. Article 2.1 requires that all quantitative restrictions within bilateral agreements maintained under Article 4 of the MFA or notified under Article 7 or 8 of the MFA in force on the day before the entry into force of the WTO Agreement shall, within 60 days following such entry into force, be notified in detail, including the restraint levels, growth rates and flexibility provisions, by the Members maintaining such restrictions to the Textiles Monitoring Body. All such restrictions maintained between GATT 1947 contracting parties and in place on 31 December 1994 are governed by the ATC. In practice, these obligations applied to four WTO Members, Canada, the European Community, 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.[102] Since restrictions falling under Article 2.1 constitute the universe of such measures which will have to be phased-out during the transitional period of 10 years, a summary is provided below, together with subsequent developments that took place during Stage 1.

1. Notifications Made Pursuant to Article 2.1

247. On 1 March 1995, Canada provided a combined notification of restraints under Articles 2.1 and 3.1 which included bilateral agreements maintained under Article 4 of the MFA or notified under

[101] See Article 4.1 of the ATC and paragraph 381.
[102] See G/L/179, paragraphs 183 to 191.

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

248. Reflecting the status of WTO membership as at 1 March 1995, Canada's Article 2.1 notification comprised 205 specific limits as well as 39 sub-limits affecting 26 WTO Members. It also contained two export authorization requirements without establishing quantitative levels (Hong Kong) and a number of group limits (India; Macau and Swaziland). Subsequently, with the WTO membership of former GATT contracting parties and the accession of new Members, the total number of specific limits, sub-limits and group or aggregate limits in respect of WTO Members was brought to altogether 295.

249. The European Community listed all restrictions covered by Article 2 *vis-à-vis* GATT contracting parties which were then Members of the WTO. These were separated into two categories of measures: Community level quantitative restrictions for direct imports and additional Community quantitative levels for goods re-imported under outward processing trade (OPT) programmes. Growth and flexibility provisions were also given. The notification of restrictions for direct imports involved 14 Members (Argentina; Brazil; Hong Kong; India; Indonesia; Macau; Malaysia; Pakistan; Peru; Philippines; Singapore; Korea; Sri Lanka and Thailand) with a total of 198 specific quota levels plus 20 sub-limits. Thus the number of specific limits and sub-limits taken together, applied against WTO Members amounted to 218. The notification of additional levels for OPT covered nine of these Members (India; Indonesia; Macau; Malaysia; Pakistan; Philippines; Singapore; Sri Lanka and Thailand) and a total of 35 limits. As the European Community was enlarged to 15 member States on the same day as the ATC entered into force, the notification presented both the amounts foreseen in the bilateral agreements for 1994, and adjusted quota levels to take into account the enlargement.

250. Norway notified the 54 specific limits it maintained on imports from 16 WTO Members (Czech Republic; Hong Kong; Hungary; India; Indonesia; Korea; Macau; Malaysia; Pakistan; Philippines; Poland; Romania; Singapore; Slovak Republic; Sri Lanka and Thailand). The notification also set out growth and flexibility provisions for each of these restrictions.

251. The United States notified measures maintained with 25 WTO Members (Bahrain; Bangladesh; Brazil; Costa Rica; Czech Republic; Dominican Republic; Hong Kong; Hungary; India; Indonesia; Jamaica; Kenya; Korea; Macau; Malaysia; Mauritius; Pakistan; Philippines; Romania[103]; Singapore; Slovak Republic; Sri Lanka; Thailand; Turkey and Uruguay) and, for information purposes, the measures maintained with 12 non-WTO Members at that time (Bulgaria; China; Chinese Taipei; Colombia; Egypt; El Salvador; Fiji; Guatemala; Nepal; Oman; Poland and the United Arab Emirates). The notification of measures with WTO Members listed 650 specific limits comprising single categories, parts of categories or groupings of categories. Provision was made for group limits in 12 of the Members listed and an aggregate limit in one of them. The notification of measures maintained with non-WTO Members comprised 251 specific limits and three countries with group limits. The notifications included information on the 1995 levels as well as growth rates and flexibility provisions.

[103]The notification with respect to Romania was without prejudice to the US' invocation of Article XIII of the WTO Agreement.

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

253. Also in a subsequent addendum, the United States corrected its notification of guaranteed access levels (GALs[104]) with Costa Rica; Dominican Republic; El Salvador; Guatemala; Haiti and Jamaica originally made under Article 3.1. Since, under the MFA, these restrictions had been notified to the Textiles Surveillance Body and had been in force on 31 December 1994, the United States concluded that this notification should have been made under Article 2.1. It also corrected the notification of three restrictions with Kuwait, from Article 3.1 to Article 2.1. As a result of the addenda and corrections made, the total number of specific limits and sub-limits in respect of WTO Members increased to 751 (696 specific limits and 55 sub-limits).

2. Observations With Respect to Notifications Made Pursuant to Article 2.1

254. Pursuant to Article 2.2, any Member could bring before the TMB any observation it deemed appropriate with regard to notifications made under Article 2.1, within 60 days of the circulation of such notifications. Four notifications were made under this provision by Colombia, Hong Kong and Macau (each in respect of the notification of the United States) and by Korea (in relation to the notifications of Canada; the European Community and the United States). The TMB reviewed each of these notifications.[105] The outcome of these reviews, apart from technical changes (reflected in the corrigenda or addenda to the notifications made under Article 2.1), does not alter the overall picture regarding the number of restrictions rolled over into the ATC.

3. Changes Implemented During Stage 1: Elimination of Restrictions Pursuant to Article 2.15 or Similar Measures

255. In September 1995, Norway notified the TMB and the Members concerned of its elimination of certain restrictions maintained under the ATC effective 1 January 1996, citing Article 2.15. Specifically, Norway removed restrictions on: (i) one-piece suits (part of category 1); (ii) trousers (category 2), both affecting 14 exporting countries; (iii) products falling under HS 6210 (part of category 1 and category 2) affecting respectively 16 and 2 exporting countries; (iv) knitted bed-linen (part of category 7) affecting 15 exporting countries; and, traps and pots (part of category 70) affecting six countries. As a result, fourteen out of the 54 specific restraints had been eliminated, as well as restraints on part categories. The TMB commended Norway for the early elimination of some of its ATC restrictions.[106]

256. As indicated in Chapter II[107], Canada decided to include tailored-collar shirts, with respect to which it had maintained restrictions in its list of products to be integrated during Stage 2. Canada also informed the TMB that with effect from 1 July 1997, it would not enforce existing restrictions on imports of this product from the 22 WTO Members affected by the restraint. These Members were the following: Bangladesh; Bulgaria; Cuba; Hong Kong; India; Indonesia; Korea; Macau; Malaysia; Mauritius; Myanmar; Pakistan; Philippines; Poland; Qatar; Romania; Singapore; South Africa;

[104] Guaranteed Access Levels (GALs) are quantities of products of a category that a country can export to the United States provided the actual product shipped qualifies for such treatment, *inter alia*, by being made of "US Components".

[105] See G/L/179, paragraphs 192 to 196.

[106] G/L/179, paragraph 203.

[107] See paragraph 47.

Sri Lanka; Swaziland; Thailand and the United Arab Emirates. Though Canada did not specifically refer to the provisions of Article 2.15 (since the restraints *de jure* remained in place till 31 December 1997), the 22 restrictions *de facto* ceased to apply during the last six months of the first stage of the integration process (following which, by way of integration, they were formally eliminated).

4. Implementation of the Provisions Related to Growth and Flexibility

257. As already noted in the TMB's first comprehensive report[108], growth and flexibility provisions had been notified along with the restraint levels under Article 2.1 and these had not been challenged by any Member. The TMB received no information which would have indicated that a problem had arisen in the implementation of Articles 2.13 and 2.16. Further, the TMB did not see any indication of quantitative limits being placed on the combined use of swing, carryover and carry forward.

5. Implementation of Other Provisions of Article 2, in Particular Articles 2.17 and 2.18

258. The manner in which the provisions of Article 2.18 (related to small suppliers, new entrants and, to the extent possible, least-developed country Members) had been implemented by the respective Members in Stage 1 also had implications on the implementation of the same provisions during Stage 2. Accordingly, the present report deals with this matter in the context of developments that took place during the second stage of the integration process.[109] The same applies to the administrative arrangements notified pursuant to Article 2.17 during Stage 1 since these same arrangements continued to apply during Stage 2.[110]

B. STAGE 2: DEVELOPMENTS IN AND IMPLEMENTATION OF THE RESTRICTIONS NOTIFIED UNDER ARTICLE 2

1. New Notifications Received With Reference to Article 2.1

259. In early February 2001, the United States submitted an addition to its notification under Article 2.1, following Oman's accession to the WTO. This notification was made pursuant to the provisions of Oman's Protocol of Accession to the WTO, in which it is stated, *inter alia*, that "the quantitative restrictions on imports of textiles and clothing products originating in Oman between Oman and WTO members that were in force on the date prior to the date of accession of Oman to the WTO should be notified to the Textiles Monitoring Body (TMB) by the Member maintaining such restrictions and would be applied for the purpose of Article 2 of the Agreement on Textiles and Clothing". According to this notification, the United States applied specific limits on imports of seven clothing items (defined as combined categories) from Oman. The TMB took note of this notification.

2. Changes in Restrictions Previously Notified Under Article 2.1

(a) Removal of restrictions by way of integration

260. As indicated earlier, if a product that has been subject to a restraint notified under Article 2.1 were to be integrated into GATT 1994 during Stage 2, imports of that product would be removed as a result of integration, from the scope and provisions of the ATC, implying also that the respective restraints had to be lifted. Members maintaining restrictions falling under Article 2.1 included some

[108] G/L/179, paragraph 205.
[109] See paragraphs 283 to 295.
[110] See paragraphs 296 to 309.

products previously subject to restraints in their respective second stage integration programmes. These developments are reported in detail in Chapter II of the present report.[111]

(b) Notifications made pursuant to Article 2.15: elimination of restrictions without integration

261. In reply to specific questions put by the TMB (which were related to the process of integration in a broader context), in June 1997, Norway stated, *inter alia*, that it "was committed to a continuation of a policy of gradual liberalisation and expects to be able to notify later this year [1997] to the TMB (and to WTO Members directly concerned) further steps taken pursuant to Article 2, Section 15, of the ATC. Norway maintains restraints for a very limited group of products, and in this situation Norway had not found liberalisation by way of integration the best way to proceed, but had pursued a policy of gradual liberalisation of products under restraint under Article 2.15. Norway was committed to continuing this policy".[112]

262. In September 1997, following the statement above, Norway submitted a notification with particular reference to Article 2.15, indicating the elimination in two steps of most of the restrictions remaining under the ATC with respect to WTO Members. The first step was implemented as from the end of 1997 (in practice, as of 1 January 1998) and the second step took effect at the end of 1998 (i.e. from 1 January 1999). The restrictions and WTO Members affected were the following:

First step

- restraints on imports of products of category 1 (woven jackets): with respect to the Czech Republic; Hungary; India; Indonesia; Korea; Malaysia; Pakistan; Philippines; Poland; Romania; Singapore; Slovak Republic; Sri Lanka and Thailand;
- restraints on imports of products of Category 2 (woven trousers): with respect to Hong Kong and Macau;
- restraints on imports of products of category 7 (bed linen); with respect to the Czech Republic; Hong Kong; Hungary; Indonesia; Korea; Macau, Malaysia; Philippines; Poland; Romania; Singapore; Slovak Republic; Sri Lanka and Thailand;
- restraints on imports or products of category 70 (fishing nets) with respect to Poland and Romania.

Second step

- restraints on imports of products of category 1 (woven jackets): with respect to Hong Kong and Macau;
- restraints on imports of products of category 7 (bed linen) with respect to India and Pakistan;
- restraints on imports of products of category 70 (fishing nets) with respect to Korea.

263. As a result, as from 1 January 1998, 32 restrictions affecting altogether 16 WTO Members were eliminated, followed (one year later) by the elimination of five further restraints affecting five WTO Members. The Members affected had been informed by Norway in advance, in accordance with Article 2.15. In taking note of this notification, the TMB commended Norway for the early elimination of most of the restrictions it maintained under the ATC.

[111] See paragraphs 47 to 50.
[112] See G/L/179, paragraph 204.

264. In September 2000, Norway made another notification under Article 2.15. According to this notification, in order to contribute to the objective of integration of textiles and clothing into GATT 1994 and with particular reference to Article 2.15, Norway had decided to eliminate all remaining quantitative restrictions on textile imports. Therefore, the restraints applied on imports from Indonesia, Malaysia and Thailand of products of category 70 (fishing nets) were, in accordance with Article 2.15, rescinded on 1 January 2001. The Members affected had been informed in advance, in accordance with Article 2.15. The TMB commended Norway for the early elimination of all the restrictions it maintained under this Agreement.

265. In November 1997, the United States notified, with reference to the provisions of Article 2.15, the elimination of restraints applied on imports of products belonging to several product categories from Romania. According to the notification, restraints on 11 US product categories were to be eliminated effective 1 January 1998. Romania had been informed in advance.

266. In mid-January 1998, Canada submitted a communication pursuant to Article 2.15, that it had accorded "ex-quota treatment" to imports from all sources of: children's blouses and shirts of categories 7.3 and 8.1; women's and girls' knitted blouses and shirts of category 8.1; women's and girls' blouses and shirts of silk; women's and girls' blouses and shirts of tariff item 6206.90.00.00; saris of category 4.3; women's and girls' ensembles of category 4.1; babies' snowsuits; coats and jackets of category 14.1; and rainwear of category 1.3. As a result, Canada would no longer request export licences for those products as a condition for import into Canada. However, these products remained subject to Canadian import permit requirements for monitoring and surveillance purposes. The TMB understood that "ex-quota treatment" implied the elimination of restrictions notified pursuant to Article 2.1 by Canada with respect to the products involved. It observed that Article 2.15 contained certain specific deadlines for notification which had not been met by Canada; on the other hand, the TMB observed that the affected WTO Members had been informed accordingly. The TMB took note of this communication.

267. In June 2001, Canada submitted an additional communication pursuant to Article 2.15, according to which Canada would remove the restraints on baby garments of category 17, effective 1 January 2002. According to Canada, this measure was taken following Canada's decision to remove all baby apparel from restraint. The Member affected by the removal from restraint of baby garments of category 17 would be Korea. Canada further stated that it will not be reducing the category 17 restraint level of this Member to account for the removal of baby garments from restraint, thereby providing a further *de facto* increase in access for it to the Canadian market, and that as a result of the action under Article 2.15, all remaining restraints on baby apparel would be eliminated by 1 January 2002.

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

268. 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.

269. 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.

270. 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.[113] According to the US communication, in the interim, detailed information concerning the Trade and Development Act may be found on US Otexa's website.[114]

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

271. In response to the TMB's request for information and notification made in the context of the preparation of the present 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.[115] 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".

(e) Increase in certain restraint levels, other than pursuant to Article 2.14(a)

272. In January 1998, Canada informed the TMB that it had decided to increase by 10 per cent, as of 1 January 1998, the 1998 restraint levels for winter outerwear (falling under category 2.0) in respect of imports from WTO Members. According to the notification, this permanent, one-time increase would be applied after adjusting the 1997 restraint levels in accordance with the growth provisions of the ATC, including Article 2.14. Canada also indicated that for the subsequent years the growth provisions of the ATC would be applied on the basis of this higher 1998 restraint level. On the basis of related information available to the TMB, it could be established that this one-time increase affected 18 WTO Members (Bangladesh; Bulgaria; Hong Kong, China; India; Indonesia; Korea; Macau; Malaysia, Mauritius; Myanmar, Pakistan; Philippines; Romania; Singapore; Sri Lanka, Swaziland; Thailand and the United Arab Emirates).

(f) Adjustments implemented in the level of certain restrictions as a result of integration of parts of restrictions notified under Article 2.1

273. The United States integrated into GATT 1994, during Stage 2 a part of one category (category 239) which had been subject to specific restraints and also a number of other product categories which had been falling under group or aggregate limits.[116] Canada also integrated one product falling under a broader (aggregate) restraint applied on imports from two Members. Since Article 4.3 deals specifically with situations in which a product constituting only part of a restriction is notified for integration pursuant to the provisions of Article 2, this subject is dealt with, in more details, in the Chapter regarding the implementation of the provisions of Article 4.[117]

[113] See also paragraphs 636 and 637.

[114] Since website information is not a substitute for official notifications and communications to be addressed to appropriate WTO bodies, and also keeping in mind the tight time constraint for finalizing this report, the TMB preferred to wait for the official communications of the United States as indicated in the US reply.

[115] Memorandum of Understanding between the European Community and the Democratic Socialist Republic of Sri Lanka on arrangements in the area of market access for textile and clothing products, Official Journal No L 80 of 20/3/2001.

[116] See paragraph 50.

[117] See paragraphs 407 to 413.

(g) Views and comments of WTO Members in response to the TMB's request for information and/or to further specific questions raised by the TMB

274. In their reply to the TMB's request for information and notification made in the context of the preparation of the present report, ITCB members that are also Members or observers of the WTO stated, *inter alia*, that "[t]hree restraining Members, namely Norway, Canada and the US, notified their elimination of certain quota restrictions pursuant to Article 2.15 of the ATC. But while Norway and Canada acted on an MFN basis, the US did so only with respect to restrictions on a single Member. It did not eliminate quotas on the same products from other Members. Nor did it provide any information regarding any consideration that might have been given to the treatment of exports of those products from such other Members".

275. In reply to the TMB's request for information and notification, the European Community 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[118]] and hopes thus to contribute to further improving market access in the sector in advance of 2005. In this respect, the EC would like to emphasise that Article 2.15 of the ATC explicitly acknowledges the right of Members to eliminate restrictions towards individual countries during the integration phase. This deviation from Article I of the GATT 1994 ensures that such additional liberalisation of trade in textiles is not *de facto* inhibited by the application of the general MFN principle".

3. Implementation of the Provisions Related to Growth (Article 2.14(a))

(a) Information at the TMB's disposal

276. Pursuant to Article 2.14(a), the growth rates carried over from the pre-ATC regime and already increased by not less than 16 per cent annually during Stage 1 had to be further increased by not less than 25 per cent annually during the second stage of the integration process. There is no obligation under Article 2 for restraining Members to submit notifications regarding their compliance with this requirement. However, any particular matter with reference to the implementation of the provisions of Article 2 including the one related to growth, can be referred by any Member to the TMB. No issue has been brought before the TMB or to its attention with respect to the application and implementation of the growth rate factors. Therefore, it can be assumed that the requirements stipulated in Article 2.14(a) have been met by the Members maintaining restrictions under Article 2.1.

(b) Conclusions adopted by the CTG in February 1998 in its first major review

277. The conclusions of the major review of the implementation of the ATC in the first stage of the integration process, as adopted by the CTG, contain, *inter alia*, the following:

> "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.

[118] See paragraph 271.

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."

(c) Views and comments of WTO Members in response to the TMB's request for information and/or to further specific questions raised by the TMB

278. In the communication of the ITCB members provided in response to the request of the TMB, it is stated that ITCB members "are cognizant of the increases in growth factors pursuant to the relevant provisions of Article 2. However, … an augmentation of access should not be viewed as a substitute for the integration of relevant products by means of complete elimination of quota restrictions … . In this regard, we also wish the TMB to note that, notwithstanding the increments in growth rates, the restrictive nature of quota restrictions has not lessened when seen in the light of actual trade".

279. In the communication of Canada provided in response to the request of the TMB and to further specific questions raised by the TMB, Canada stated that "many of the growth rates under Canada's bilateral arrangements under the MFA were 6 per cent in 1994. As a result, taking into account both the original growth provisions stipulated in Canada's bilateral restraint arrangements and the ATC growth-related provisions, most restraint levels on these apparel restraints have increased by 70.9 per cent from 1995 to 2001 as compared to the 50.3 per cent increase that would have resulted under the bilateral arrangements alone. During the same period, the Canadian domestic market grew by less than 10 per cent, with imports from the developing countries alone increasing their market share from 31 per cent to 47 per cent from 1994 to 2000. The ATC also requires the growth rates to be increased again on 1 January 2002 by an additional 27 per cent, which further expands the market opportunities provided under the ATC for products still remaining under restraint during the last three years of the ATC".

280. In the communication of the European Community provided in response to the request of the TMB and to further specific questions raised by the TMB, the European Community stated that "the contention that notwithstanding increments in growth the restrictive nature of trade has not lessened when seen in the light of actual trade is incorrect. Total EU trade in textiles and clothing (T&C) represented € 110 billion in total (import/export) in year 2000. EU imports in 2000 reached € 69.5 billion, an increase of 16.6 per cent over 1999 and an increase of 54 per cent over 1995. In 2000 EU imports of product categories subject to quotas were € 19.7 or 28.4 per cent of total T&C imports: the share is up from the 25.3 per cent recorded in 1998. Thus the value of the share of imports represented by goods under quota has increased in the context of an overall growing market. The share of imports under quota has remained stable for non-WTO countries since 1998 but there has been a marked increase for WTO countries (over 7 percentage points). In addition total T&C imports from countries subject to quotas has substantially increased in these two years (+ 34 per cent)".

281. In the communication of the United States provided in response to the request of the TMB and to further specific questions raised by the TMB, the United States stated that "in contrast to the statement of the ITCB, [the United States] would reiterate that, as said in the [US'] submission, US imports of textiles and apparel have increased by over 90 per cent (in volume) since the WTO came

into effect, or by an average rate of 11.3 per cent each year (in square meter equivalent). In value terms, imports of textiles and apparel increased absolutely by 79.4 per cent, or by an average rate of 10.2 percent each year since the WTO has entered into force. US imports of textiles and apparel from ITCB members have increased even *faster* [emphasis supplied], or by 104.3 per cent in absolute terms or by 12.65 per cent each year (in square meters equivalent) since the WTO entered into force. In value terms, imports of textiles and apparel from ITCB members have increased by 90.1 per cent absolutely, or by an average annual rate of 11.3 per cent since the WTO entered into force. Over the last five years, even with quota arrangements in place, US imports of textiles and apparel grew at a faster rate than US non-oil imports (60.7 per cent versus 59.5 per cent in absolute terms, or 9.95 per cent versus 9.79 per cent average annual growth)".

4. Implementation of the Flexibility Provisions (Article 2.16)

282. No specific problem or difficulty has been reported to the TMB regarding the implementation of the provisions of Article 2.16. It appears that the technique of swing, carryover and carry forward has been and continues to be widely used by the Members whose exports are subject to restraints.

5. Implementation of the Provisions of Article 2.18

283. 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."

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".

284. 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.

(a) Implementation during Stage 1

285. The TMB received notifications from Canada, the United States and the European Community on the improvements in access provided to those Members whose exports were subject to restrictions on 31 December 1994 and whose restrictions represented 1.2 per cent or less of the total volume of the importing Members' restrictions on 31 December 1991. The TMB understood that no exporting Member qualified under this provision in the case of Norway. Canada listed 16 Members which qualified for improved access under this provision: Costa Rica; Cuba; Czech Republic; Dominican Republic; Hungary; Jamaica; Lesotho; Macau; 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 increasing the annual growth rates for the restrictions in force on 31 December 1994 by 25 per cent, in lieu of 16 per cent. Canada

included in this list not only the Members qualified on 31 December 1991 but also those qualified on 31 December 1994, the two groups of Members representing altogether over 9 per cent of the volume of Canada's total restraints.

286. 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; Macau; 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.

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

288. In reviewing the notifications above, the TMB observed 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 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.

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

(b) Implementation during Stage 2

290. In the absence of communications from Canada, the European Community and the United States in this regard, the TMB, at its meeting of November 1997, decided to renew its request for information from the Members concerned regarding their respective implementation of the provisions of Article 2.18 during the second stage of the integration process. The replies received can be summarized as follows:

- Canada stated that in respect of the Members which were qualified for improved access under Article 2.18, the growth rates for the restrictions in effect on 31 December 1997 would be increased by 27 per cent. Canada reconfirmed also that in determining eligibility for this treatment it had included not only those Members that accounted for less than 1.2 per cent of Canada's total restraints in effect on 31 December 1991, but also those which were qualified on the basis of the same criteria, on 31 December 1994;

- the European Community confirmed that the Members qualified for improved access were Peru and Sri Lanka. With regard to Peru, the two restrictions, notified under Article 2, had growth rates of 5 per cent and 7 per cent, which would become 9.21 per cent and 12.89 per cent, respectively, for the second stage of integration. The four restrictions concerning Sri Lanka, notified under Article 2, had growth rates of 7 per cent (for three) and 8 per cent (for the remaining restriction), which would become 12.89 per cent and 14.73 per cent, respectively, for the second stage of integration. These growth rates resulted from the application of the increase in growth rate normally applicable for the third stage (27 per cent) to the growth rates used for these countries during the first stage (where the European Community took the growth rates notified under Article 2 increased by 16 per cent and then further by 25 per cent);

- the United States indicated that the growth rates for the restrictions applied against imports from small suppliers would be increased by 27 per cent for the second stage. Bulgaria (which became a Member of the WTO after the entering into force of the WTO Agreement) was added to the list of beneficiaries of this treatment.

291. The TMB has not received any information that would indicate that these accelerated growth rates have not been implemented in the way they were reported by the restraining Members, in respect of imports from the beneficiaries listed in the respective communications.

(c) Conclusions adopted by the CTG in February 1998 in its first major review

292. The relevant part of the conclusions adopted by the CTG on the major review of the implementation of the ATC during the first stage of the integration process reads as follows:

> "44. A number of Members referred to Article 1.2 of the ATC which provided that Members would use Articles 2.18 […] 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 […]. 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.
>
> […]
>
> 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".

(d) Views and comments of WTO Members in response to the TMB's general request for information and/or to further queries to certain WTO Members

293. In their response to the TMB's request for information and comments in the context of the preparation of the present report, the ITCB members 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. In particular, the methodology employed by them in implementing the growth factors of the Agreement fell short of providing meaningful increases in access possibilities for small suppliers. The report should also emphasize that, with respect to least developed country Members, they failed to give any meaning to the provision. We wish 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".

294. In the communication of Canada provided in response to the request of the TMB for information and comments, and to further specific questions raised by the TMB, Canada stated 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. At the same time, at the onset of the ATC, Canada decided to expand the small suppliers provision to cover more exporters by applying Article 2.18 to the exporters who qualified in either 1991 or 1994, thereby taking into account exporters who entered the Canadian market after 1991 and before 1995. This allowed six more suppliers to benefit from the advancement of the growth rate provision. In addition, Canada applied the small [suppliers] provision to the restraints on Bulgaria when it joined the WTO as it also met the Article 2.18 criteria. 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), Macau, 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 January1998 under ATC Article 2.15 (Bangladesh, Bulgaria, Hungary, Macau, 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".

295. In the communication of the European Community provided in response to the request of the TMB for information and comments, the European Community stated that it "has applied the provisions of Article 2.18 concerning small suppliers by increasing the growth rates during the first stage of integration first by 16 per cent secondly by an additional 25 per cent. These rates were increased by an additional 27 per cent in stage 2".

6. Administrative Arrangements Agreed Between Members Following the Provisions of Article 2.17

296. According to Article 2.17, "[a]dministrative arrangements, as deemed necessary in relation to the implementation of any provision of this Article, 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 related to the implementation of Article 2 and, in particular, to the implementation of the restrictions notified under Article 2.1, were agreed between the Members concerned during the early part of the implementation of the ATC and have been dealt with in the first comprehensive report adopted by the TMB.[119] However, as these arrangements have remained in force during the second stage of the integration process and have been relied on by the Members concerned with respect to issues covered by the arrangements, it is also necessary to summarize them below.

(a) Administrative arrangements notified during Stage 1

297. Canada notified administrative arrangements concluded with 24 WTO Members (Bangladesh; Brazil; Costa Rica; Cuba; Hong Kong; Hungary; India; Indonesia; Korea; Lesotho; Macau; Malaysia; Mauritius; Pakistan; Philippines; Poland; Romania; Singapore; Slovak Republic; Sri Lanka; Swaziland; Thailand; Turkey and Uruguay). In its examination, the TMB noted that these arrangements had been bilaterally agreed and contained provisions which implemented administrative aspects of the export control systems (export licenses, monitoring of exports, quota flexibility provisions, exchange of statistics, re-exports by Canada and consultations).

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

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

300. The TMB recalled that, pursuant to Article 2.17, Members could agree on administrative arrangements as deemed necessary in relation to the implementation of the provisions of this Article.

[119] See G/L/179, paragraphs 214 to 222.

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

301. The United States notified administrative arrangements bilaterally agreed between the United States and Bangladesh; Brazil; Colombia; Costa Rica; Dominican Republic; Egypt; Fiji; Guatemala; Haiti; Hungary; India; Indonesia; Jamaica; Kenya; Korea; Macau; Malaysia; Mauritius; Pakistan; Philippines; Poland; Qatar; Romania; Sri Lanka; Thailand; Turkey; United Arab Emirates and Uruguay, respectively. These arrangements were in the form of provisions which had been drawn from previous bilateral agreements concluded between the United States and the Members concerned; these provisions had been agreed as being necessary for the proper implementation of restrictions notified to the TMB by the United States under Article 2.1. The TMB observed that this approach resulted in some respects in texts which were not easily understood, and also in some instances gave the impression that some of the provisions of the administrative arrangements were not fully consistent with others. The written replies of the United States to the TMB's requests for clarification provided some guidance in this regard.

302. While the structure and language of these administrative arrangements differed from one another, they all addressed issues such as: product coverage and related issues of classification; flexibility adjustments; overshipment charges; spacing provisions; exchange of data and information; US assistance in implementing the limitation provisions; consultation on implementation questions; "mutually satisfactory administrative arrangements"; and cooperation in the prevention of circumvention. The majority also contained provisions related to a correct category/quantity visa system and to commercial samples and personal shipments. Some also contained provisions concerning the treatment of imports of handloom products.

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

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

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

(b) Developments during Stage 2

(i) New notifications made with reference to Article 2.17

306. In April 1997, Canada provided a detailed notification of administrative arrangements concluded with the Czech Republic. The arrangements had been bilaterally agreed and contained provisions which implemented, in accordance with the provisions of Article 4.1, administrative aspects of the respective export control systems (export licences, monitoring of exports, quota flexibility provisions, exchange of statistics, re-exports by Canada, consultations). The TMB took note of this notification.

307. In February 2001, the United States notified the administrative arrangements agreed with Oman which are associated with the restrictions the United States maintained with respect to the imports from Oman under Article 2.1, following the accession of that country to the WTO. The TMB recalled that according to Article 2.17 "administrative arrangements deemed necessary in relation to the implementation of any provision of [Article 2], shall be a matter for agreement between the Members concerned", and noted that the administrative arrangements notified by the United States had been bilaterally agreed between United States and Oman. The TMB observed that the arrangements contain, *inter alia*, provisions related to product coverage, spacing of exports, exchange of respective import and export data and cooperation in the prevention of circumvention, including the provision enabling the United States to impose, in particular circumstances, triple charges on quotas. 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 also recalled that with respect to the provisions on circumvention, contained in the administrative arrangements concluded and notified by the United States, it had sought information as to how such provisions were deemed necessary in relation to the implementation of any provision of Article 2. It had also asked for explanations as to how these provisions, especially 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 had stated that circumvention often damages a country's legitimate trade by making it impossible to administer effectively its Article 2.1 quotas. The United States and the Members concerned had deemed the circumvention provisions to be necessary for the implementation of these quotas. Triple charging, which had been 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. 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 had observed that Article 5 contains detailed descriptions of the rules and procedures to be followed. The TMB had noted, *inter alia*, that Article 5.4 seems to provide some flexibility in terms of remedies or agreed actions that could be foreseen in cases when circumvention has occurred. It had observed, however, that Article 5 contains no reference to the possibility for the importing Member to impose triple charges on quotas, as a deterrent to circumvention. The TMB had noted in this regard that this provision had not been utilized by the United States. The TMB had 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 had understood that this statement applied to each and every provision of the arrangements notified. The TMB had 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. In light of the above, the TMB sought confirmation from the United States of its understanding that the statements made by the United States, as mentioned above, also apply to the administrative arrangements concluded between the United States and Oman. The United States confirmed the Body's understanding.

(ii) *Other matters referred to the TMB with reference to Article 2.17*

308. In July 1997, Pakistan notified to the TMB, pursuant to the provisions of Article 2.17, the text of a Memorandum of Understanding signed by the representatives of the Government of Pakistan and the Government of the United States in March 1996. This notification was preceded by a communication from the United States, made pursuant to Article 5 and received in October 1996, informing the TMB of the main features of a mutually acceptable solution reached with Pakistan, as also reflected in the Memorandum of Understanding attached to Pakistan's July 1997 notification. Since the two communications regarding the same matter had been made pursuant to two different provisions of the ATC (i.e. Article 2.17 by Pakistan and Article 5 by the United States), the TMB decided to seek clarification from the two Members concerned. As a result, the Body could not review the respective notifications prior to the beginning of the implementation of Stage 2. Since the Memorandum of Understanding notified by Pakistan under Article 2.17 had its roots in an action taken by the United States on grounds of alleged transhipment by Pakistani exporters with respect to certain products, the present report deals with all aspects of the issue, including the notifications made by Pakistan with reference to Article 2.17, in the Chapter devoted to the circumvention provisions of the ATC.[120]

(iii) *Implementation of the administrative arrangements*

309. Apart from the issue mentioned in paragraph 308 and the continuation by the United States of requiring visas for products included in its Stage 2 integration programme[121] no other matter has been referred to or been raised in the TMB that would have touched upon the implementation of the administrative arrangements agreed between the Members concerned and notified to the TMB pursuant to Article 2.17.[122]

[120] See paragraphs 434 to 464.

[121] See paragraphs 58 to 62.

[122] In reply to the clarifications sought by the TMB when reviewing the administrative arrangements during Stage 1, the United States confirmed that the visa arrangements were part of the administrative arrangements.

C. INTRODUCTION OF NEW RESTRICTIONS DURING STAGE 2 (ARTICLE 2.4)

310. 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] …".

311. During the second stage of the implementation of the integration process, on the basis of information available to the TMB, it can be established that in a specific case referred to the DSB it was concluded that the measures applied by a Member had been inconsistent, *inter alia*, with the provisions of Article 2.4 (see paragraph 312).[123] In an other case, the Panel concluded[124] that the transitional safeguard measure imposed by a Member was inconsistent with its obligations under different specific provisions of Article 6 and, therefore, one could add, by implication, that it was inconsistent with Article 2.4 (see paragraph 316). In addition, in some communications addressed to the DSB by certain Members, non-compliance, *inter alia*, with the provisions of Article 2.4 (or of Article 2) was also claimed (see paragraphs 313 to 315, and paragraph 318). On a few occasions, the conclusions reached by the TMB also implied that the measures examined would not be consistent with Article 2.4 (see paragraphs 314 to 317). The above cases are summarized as follows:

1. Turkey: Restrictions on Imports of Textile and Clothing Products

312. The Panel established by the DSB, at the request of India, to examine the imposition of quantitative restrictions by Turkey on a broad range of textile and clothing products, concluded that the measures adopted by Turkey against India were inconsistent with Articles XI and XIII of GATT, and consequently, with Article 2.4 of the ATC. This conclusion was also upheld by the Appellate Body. The two reports were adopted by the DSB in November 1999.[125]

2. United States: Measures Affecting Textile and Apparel Products as a Result of the Change to the US Rules of Origin

313. In November 1998, in its renewed request for consultations, the European Community considered, *inter alia*, that the changes in question "[were] not in conformity with the obligation of the United States under the WTO Agreement on Textiles and Clothing. Article 2.4 [of the ATC] requires that no new restriction in terms of products or Members shall be introduced …". Subsequently, the two parties reached a mutually agreed solution to this dispute in the sense of Article 3.6 of the DSU.[126]

3. Colombia – Transitional Safeguard Measure on Imports of Plain Polyester Filaments from Thailand

314. In September 1998, in its request for the establishment of a panel, Thailand considered that the continued application of this safeguard measure (in spite of the recommendations made by the TMB) meant that Colombia had failed to carry out its obligations under the WTO Agreement, including Article 2 of the ATC. Subsequently, with the expiration of the measure contested, Thailand withdrew its request for the establishment of a panel.[127]

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[123] As regards cases of violations (US-Costa Rica and US-India) and alleged violation (US-European Community) of the provisions of Article 2.4 during Stage 1, refer to G/L/179, paragraphs 200 to 202.

[124] This Panel report has been appealed under Article 16.4 of the DSU.

[125] For more details, see paragraph 377.

[126] See paragraphs 400 to 402.

[127] See paragraphs 163 to 177.

4. Argentina – Transitional Safeguard Measures on Imports of Woven Fabrics of Cotton and Cotton Mixtures Originating in Brazil

315. In February 2000, in its request for the establishment of a panel, Brazil stated that in spite of the TMB's recommendations, the matter remained unresolved. Brazil was of the view that the measures applied by Argentina were inconsistent with Argentina's obligations, *inter alia*, under Article 2 of the ATC. Subsequently, Argentina eliminated the measures in question and the two Members notified a mutually agreed solution to the DSB.[128]

5. United States – Transitional Safeguard Measures on Combed Cotton Yarn from Pakistan

316. In April 2000, in its request for the establishment of a panel, Pakistan indicated that the United States had continued to maintain its unilateral restraint on imports from Pakistan despite the recommendation of the TMB. Pakistan considered that the measure was inconsistent, *inter alia*, with Article 2.4 of the ATC. The DSB established a panel. The Panel concluded, *inter alia*, that the measure was inconsistent with the provisions of Article 6 of the ATC. Therefore, one could add, by implication, it was also inconsistent with Article2.4.[129]

6. United States – Introduction of a New Restraint on Certain Imports from Turkey, as Part of a Broader Understanding Reached by the Two Members

317. In December 1999, in considering this measure on the basis of the information available to it, the TMB, after having specifically recalled the provisions of Article 2.4, concluded that the measure agreed between Turkey and the United States, affecting imports by the United States of products of category 352/652, had not been demonstrated to be in conformity with the provisions of the ATC.[130]

7. Requests for consultations with Brazil and Romania with reference, *inter alia*, to Article 2 of the ATC by the United States

318. The TMB received two communications from the United States, for the Body's information. These consisted of copies of two DSB documents whereby on 30 May 2000 the United States requested consultations with Brazil and Romania under the provisions of the DSU, claiming that the respective statutes and regulations applied by them appeared to be inconsistent, *inter alia*, with the provisions of Article 2 of the ATC.[131] The TMB is not aware of the follow-up that has been given to these two communications.

D. OTHER PROVISIONS OF ARTICLE 2

1. Observations, if any, Brought to the Attention of the TMB, Pursuant to Article 2.2

319. 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 …". 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.[132] The TMB has not received any communication during Stage 2 with reference to Article 2.2.

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[128] See paragraphs 181 to 205.
[129] See paragraphs 150 and 151.
[130] See paragraphs 488 to 495.
[131] See paragraphs 535 and 536.
[132] See paragraph 254.

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

320. 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 Stage 2.

321. 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, 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.

3. Safeguard Measures Initiated Under Article XIX of GATT 1994 in Terms of Articles 2.19 and 2.20 of the ATC

322. Articles 2.19 and 2.20 refer to safeguard measures applied under Article XIX of GATT 1994 during the duration of the ATC 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 either during Stage 1 or Stage 2 that would have fallen under the provisions of Articles 2.19 and 2.20.

E. REVIEW OF THE IMPLEMENTATION OF ARTICLE 2 BY THE TMB (PURSUANT TO ARTICLE 2.21)

323. Article 2.21 requires the TMB to keep the implementation of Article 2 under review. During the second stage of the integration process, the TMB reviewed notifications made by Members pursuant to Articles 2.1, 2.6 and 2.7(b), 2.8(a) and 2.11, 2.8(b) and 2.11, 2.10, 2.15 and 2.17.[133]

324. 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]". During Stage 2, one such request had been made, which specifically referred to Article 2.21. This request was jointly made by Hong Kong, China; India and Pakistan, asking the TMB to review, in accordance with Articles 8.1 and 2.21, the implementation of the Stage 2 integration programme of the United States with respect to the continuation of visa requirements for products included in this programme.[134] It has to be noted that the examination of previous communications addressed to the TMB (during Stage 1) with reference to Article 2.21 (Colombia, also on behalf of several other WTO Members that are members of the ITCB: allocation of products into the four groups for the purpose of integration; discrepancies in the first stage integration programme notified by the European Community; European Community: integrating products belonging to "ex HS lines" by

[133] The review and assessments of the TMB of integration programmes (Articles 2.6 and 2.7, 2.8(a) and 2.11, 2.8(b) and 2.11) are reported in paragraphs 15 to 114.

[134] See paragraphs 58 to 62.

any WTO Members) have also continued to provide guidance to the TMB during Stage 2, while reviewing particular aspects of integration programmes notified.

F. FURTHER COMMENTS AND OBSERVATIONS OF THE TMB.

325. In providing an overview of the implementation of the provisions of Article 2 (except those concerning the integration process), as reflected in Sections A to E of this Chapter, a number of important matters could be identified, in particular on the basis of views and comments provided by Members in response to the TMB's request, which would require further reflection. Members might wish to elaborate further on some of these matters, or to provide additional comments with respect to them in conducting in the CTG the major review foreseen in Article 8.11. The following paragraphs, reflecting some further comments and observations of the TMB, are designed to make a contribution to the Members' consideration of these matters.

1. The Effect of the Growth Provisions on Actual Trade and on Trading Opportunities

326. The TMB recalled that ITCB members had stated in their communication that they were "cognizant of the increases in quota factors pursuant to […] Article 2. However, […] an augmentation of access should not be viewed as a substitute for the integration of relevant products by means of complete elimination of quota restrictions. […] In this regard, […] notwithstanding the increments in quota rates, the restrictive nature of quota restrictions has not lessened when seen in the light of actual trade".[135]

327. As regards the role of the growth provisions, the statement of the ITCB members also recognises that their implementation, overall, could and, in fact, increased market access opportunities. The TMB is in agreement with the comment that an augmentation of access should not be viewed as a substitute for the integration of the products concerned, and is not aware of any statement by a Member that would challenge this comment by the ITCB members. Observing that a complete elimination of quota restrictions may not necessarily amount to the integration of the products concerned in the sense of the provisions of the ATC (since restrictions can also be eliminated, without integration, under Article 2.15), the TMB recalled 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.

328. In their responses, Canada, the European Community and the United States[136] disagree with the assessment of ITCB members according to which the restrictive nature of quota restrictions has not lessened. Some of the arguments provided (Canada: the large difference between the dynamics of growth of imports from developing country Members and the growth of the market overall; European Community: the volume of the share of imports in products still subject to restrictions has increased in the context of an overall growing market; United States: the increase in imports of textiles and apparel, in volume and value terms, since the WTO entered into force, particularly from ITCB members, and the fact that these imports grew at a faster rate than non-oil imports) would indicate that actual imports in several restrained products also increased. Notwithstanding this, it can be equally true that with respect to several products with high rate of quota utilization, the restrictions continued to limit the expansion of exports for which otherwise the demand would be manifest.

329. In the view of the TMB, any reliable assessment of this issue would require a much more detailed analysis, practically on a product-by-product, or specific restriction-by-specific restriction basis. Such an analysis would have to consider a combination of a number of elements, such as:

- the size of the initial growth rate taken over from the former MFA regime as well as the size of the respective original quantitative restriction;

[135] See paragraph 278.
[136] See paragraphs 279 to 281.

- the rate of utilization of the respective restraints during a representative period;
- the evolution of demand for the respective products in the markets concerned;
- the potential to satisfy such demand in competitive terms (quality, price, time of delivery, etc.) by the Members subject to such restrictions.

330. In the absence of such information, the TMB is not in a position to conduct such a thorough analysis. With a view to facilitating Members' further reflection, it provides, however, a table on the potential effects of the implementation of the growth provisions of the ATC (see Table 13).

Table 13
Effect of the Growth Provisions on Article 2 on Different Initial Growth Rates Taken Over From the Former MFA Regime

Growth rate and quota			1%	100	2%	100	3%	100	4%	100	5%	100	6%	100	7%	100
Stage 1	1995	16%	1.16%	101.16	2.32%	102.32	3.48%	103.48	4.64%	104.64	5.80%	105.80	6.96%	106.96	8.12%	108.12
	1996		1.16%	102.33	2.32%	104.69	3.48%	107.08	4.64%	109.50	5.80%	111.94	6.96%	114.40	8.12%	116.90
	1997		1.16%	103.52	2.32%	107.12	3.48%	110.81	4.64%	114.58	5.80%	118.43	6.96%	122.37	8.12%	126.39
Stage 2	1998	25%	1.45%	105.02	2.90%	110.23	4.35%	115.63	5.80%	121.22	7.25%	127.01	8.70%	133.01	10.15%	139.22
	1999		1.45%	106.54	2.90%	113.43	4.35%	120.66	5.80%	128.25	7.25%	136.22	8.70%	144.59	10.15%	153.35
	2000		1.45%	108.09	2.90%	116.72	4.35%	125.91	5.80%	135.69	7.25%	146.10	8.70%	157.16	10.15%	168.92
	2001		1.45%	109.66	2.90%	120.10	4.35%	131.38	5.80%	143.56	7.25%	156.69	8.70%	170.84	10.15%	186.06
Stage 3	2002	27%	1.84%	111.68	3.68%	124.52	5.52%	138.64	7.37%	154.14	9.21%	171.12	11.05%	189.71	12.89%	210.05
	2003		1.84%	113.73	3.68%	129.11	5.52%	146.30	7.37%	165.49	9.21%	186.87	11.05%	210.67	12.89%	237.12
	2004		1.84%	115.83	3.68%	133.86	5.52%	154.38	7.37%	177.68	9.21%	204.08	11.05%	233.95	12.89%	267.69

2. Issues Related to the Implementation of Article 2.15

331. 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".

332. Keeping in mind the language quoted above, the TMB considered the comments made by the ITCB Members and the European Community, included, respectively, in paragraphs 274 and 275. The TMB is of the view that, on the one hand, it would be inappropriate to infer that removing restraints affecting one Member or some Members, but keeping the same restraint in place *vis-à-vis* imports from some other Members would, in itself, constitute a breach of the respective obligations inscribed in Article 2.15. On the other hand, it would be similarly inappropriate to suggest that Article 2.15 constitutes a positive encouragement to Members for eliminating restrictions on a selective basis, i.e. to eliminate them on imports of some and to continue to apply them *vis-à-vis* some other Members. The last sentence of Article 2.15 contains the unambiguous obligation that in considering actions that may be taken under this Article, the Members concerned shall take into account the treatment of similar exports from other Members.

333. In light of the above, the issue of the US' Article 2.15 measures should be narrowed down to the observation of ITCB members that the United States did not provide any information regarding any consideration that might have been given to the treatment of exports of the same product of other

Members. The TMB agrees with this observation. The question arises as to whether Members are obliged, or not, to provide indications on how they complied with the requirements defined in the last sentence of Article 2.15. On the one hand, the language of this provision does not contain any such explicit requirement or obligation. On the other hand, it can be argued that without any indication in this regard, Members will not know to what extent and how these requirements were met.

334. Consequently, it is recommended that Members, in making future notifications to the TMB pursuant to Article 2.15, should include such references as well.

3. Implications of the Implementation of the US Trade and Development Act of 2000

335. The TMB noted that the United States would provide full information to the WTO regarding the African Growth and Opportunity Act and the Caribbean Basin Trade Partnership Act 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. The TMB observed, however, that since at least certain aspects of the Act in relation to certain Members, affecting also perhaps restrictions notified under Article 2.1, could be implemented as from 1 October 2000, it would be appropriate for the United States to provide some indications to this effect at the earliest possible date.

4. Suspension of the Application of Restrictions

336. The TMB noted the response provided by the European Community, as reflected in paragraph 271 above, 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.

5. Implementation of the Provisions of Article 2.18

337. It is observed 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 Community 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.

338. The TMB recalled that it had already observed that the language of 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. On the same occasion, the TMB noted, however, that the result in terms of market access (in the fist stage) would have been improved if the methodology chosen for the

advancement by one stage of the growth rates had also included the growth factor of the first stage, as done by one Member.

339. Reflecting further on this issue in preparing the present report, the TMB was of the impression that the notion of "advancement" appeared to be ambiguous, raising, therefore, doubts as to what could have been the drafters' intention in using this notion. A better and more result-oriented approach in reading the language of Article 2.18 is to put the emphasis on the objectives this provision is designed to achieve. These objectives are clearly defined by stating that "meaningful improvement in access […] shall be provided, at the entry into force of the WTO Agreement and for the duration of this Agreement" (emphasis supplied). It goes without saying that the methodology used by the European Community provides more meaningful improvement in access. The TMB observed that, notwithstanding the methodology applied by the Members concerned for the advancement by one stage of the respective growth rates, meaningful improvement in access had to be provided by them for the whole duration of the ATC implementation. Therefore, in a way, independent of the methodology chosen previously, every effort has to be made by the three restraining Members to ensure that meaningful improvement in access for the exports of small suppliers be provided during Stage 3. To achieve this goal, the possibility of providing "at least equivalent changes as may be mutually agreed with respect to a different mix of base level, growth and flexibility provisions" is, in the view of the TMB, still an option to be considered.

V. RESTRICTIONS OTHER THAN THOSE TAKEN OVER FROM THE FORMER MFA REGIME

340. 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 are covered by the provisions of Article 2[137], all other restrictions, whether justified or not under GATT 1994, are dealt with in Article 3. 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. However, for purposes of transparency, information has to be provided to the TMB with respect to any new restriction or changes in existing restrictions taken under any GATT 1994 provision. Restrictions not justified under GATT 1994 have to be either brought into conformity with GATT 1994 or be phased out during the duration of the ATC, according to the modalities defined in Article 3.

A. RESTRICTIONS NOTIFIED PURSUANT TO ARTICLE 3.1

341. 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 these notifications had to be submitted during the early part of the implementation of the ATC and have been covered by the first comprehensive report adopted by the TMB.[138] Notwithstanding this, the measures notified are also summarized below, since the bulk of these measures continued to be applied during Stage 2 as well, and also, because the relevant changes can only be understood and assessed if a background is provided.

1. Notifications Received During Stage 1 and Their Review

342. Twenty-nine Members submitted notifications under Article 3.1. Of these, ten Members (though not required under the provisions of Article 3) reported that they maintained no restrictions

[137] See Chapter IV of this report.
[138] See G/L/179, paragraphs 228 to 236.

of the type referred to in this Article (Chile; Indonesia; Kenya; Macau; Mauritius; New Zealand; Philippines; Saint Kitts and Nevis; Singapore and Sri Lanka). The TMB took note of these notifications.

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

344. Canada and the United States provided notifications under Article 3.1 to set out the quantitative restrictions in place with exporters which were not WTO Members at that time. In the case of Canada, a combined notification under Articles 2.1 and 3.1 was provided in order to present a total picture of all quantitative restrictions with WTO Members, plus GATT 1947 contracting parties that were not yet WTO Members and trading partners that were neither GATT 1947 participants nor WTO Members (Bulgaria; Cambodia; China; Cuba; North Korea; Laos; Lebanon; Lesotho; Nepal; Oman; Poland; Qatar; Russia; Syria; Chinese Taipei; United Arab Emirates and Vietnam). The United States notified quantitative restrictions in place with GATT contracting parties which had not yet become WTO Members and with countries which were neither GATT contracting parties nor WTO Members (Haiti; Laos; Former Yugoslav Republic of Macedonia; Qatar and Ukraine). The United States subsequently reported amendments to this notification, all of which were noted by the TMB. In the TMB's review of these notifications, measures applicable to countries which had since become Members of the WTO and would fall under the coverage of Article 2.1 were examined under the provisions of that Article.[139]

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

346. In three notifications under Article 3.1, the provisions of GATT Article XVIII:B were cited with the measures being part of the overall reviews of such restrictions by the Committee on Balance-of-Payments Restrictions (Bangladesh; India and Pakistan). The list of restricted products submitted by Bangladesh comprised a wide variety of woollen and knitted fabrics of cotton and synthetic fibres plus second-hand clothing. The notification of Pakistan extended to woven fabrics of cotton and synthetic fibres, carpets, knitted fabrics, made-up textile articles and clothing. India, in response to a request for clarification, informed the TMB that all products in the Annex to the ATC had been covered by quantitative restrictions in terms of GATT Article XVIII:B as of 1 January 1995; however, imports of several textile and clothing items had been liberalized in February 1995 with a number of fibres, yarns and industrial fabrics permitted to be imported freely by all persons without an import licence and a number of fabrics, made-ups and garments permitted to be imported against special import licences.

[139] It should be noted that, at present, practically none of the restrictions notified by Canada and the United States falls under the provisions of Article 3, because the countries or customs territories affected either became WTO Members (and the respective restrictions were covered by Article 2), or are still outside the WTO (and Article 3 of the ATC does not apply to trade with non-Members of the WTO).

347. In addition, two notifications (Egypt; Korea) referred also to measures which had been maintained with reference to Article XVIII:B and which would continue to remain in place for a certain period of time after the formal disinvocation of the said provisions. Korea provided information on its restriction on imports of silk yarn and certain silk fabrics under Article XVIII:B. The TMB noted that these measures were covered by Korea's programme of liberalization of balance-of-payments measures notified to the GATT Council in 1994 and were scheduled to be removed or brought into conformity with GATT on 1 July 1997.[140] Also in response to a request for more information on the restrictions in place, Egypt reported that it was maintaining a conditional prohibition on imports of textiles until 1 January 1998 and on clothing until 1 January 2003, as part of its programme for the disinvocation of Article XVIII:B undertaken in 1995 whereon the Committee on Balance-of-Payment Restrictions stated that "the Committee understood that Egypt has thus disinvoked Article XVIII:B with effect from 30 June 1995, and that, on the basis of the implementation of the commitments by Egypt in Schedule LXIII, Members would exercise due restraint in the application of their rights under the Multilateral Agreements on Trade in Goods in relation to fabrics, apparel and made-up items remaining subject to conditional prohibition".

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

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

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

351. Other notifications of quantitative restrictions, submitted by Hungary; Japan and Slovenia, provided phase-out programmes pursuant to Article 3.2(b)[141], while the notification by Cyprus was ultimately considered to be more appropriate to Article 3.2(a).[142]

2. Notification Made With Reference to Article 3.1 During Stage 2

352. In May 2000, Mongolia submitted a notification with reference to Article 3.1, stating that it did not maintain any restrictions on textile and clothing products. The TMB took note of this notification.

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[140] The restrictions applied by Korea were removed on the date indicated.
[141] See paragraphs 355 to 362.
[142] See paragraph 354.

B. PROGRESSIVE PHASING OUT OF RESTRICTIONS NOT JUSTIFIED OR THEIR BEING BROUGHT INTO CONFORMITY WITH GATT 1994

353. Article 3.2 provides that "Members maintaining restrictions falling under paragraph 1, 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".

1. Measures Brought Into Conformity With GATT 1994 (Article 3.2(a))

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

2. Programmes for the Progressive Phasing-out of Restrictions Within a Period Not Exceeding the Duration of the ATC (Article 3.2(b))

(a) Programmes notified during Stage 1 and their respective implementation during the same stage

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

356. In the case of Japan, it was reported that the removal of the measures relating to the importation of silk yarns and fabrics from Korea would be achieved within the parameters of Article 3.2(b) 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 until the last year of the implementation of the Agreement on Agriculture. Hence, the final terms of the phase out for fabrics and yarns could only be provided by 31 March 2001, when Japan would review the necessity of further maintaining the measures in question. In this context Japan stated that "should it be decided that the measures related to Korea are to be further maintained even after the 'implementation period' [of the Agreement on Agriculture] is over, trade level with Korea, thereafter, will be annually increased from the level of the preceding year, until the phase out is completely achieved within the duration of the ATC". 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 could observe 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[143], the request made by one of the parties that the relevant information on the specific levels should be kept confidential.

357. 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.

(b) Developments in the implementation of the respective programmes during Stage 2

358. In a communication made in December 1997, Hungary indicated that it would, in addition to the phase-out programme previously notified, liberalize as of 1 January 1998 not only a further 25 per cent of the import volume of textiles and clothing subject to global quota, but all remaining textile and clothing global quota restrictions notified under Article 3.1 *vis-à-vis* all WTO Members. The TMB commended Hungary for the early elimination of all its restrictions.

359. 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.

360. In a subsequent communication, dated 3 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". The communication referred to the notification made by Japan in 1996, in which it had been indicated that Japan would review the necessity of further maintaining the measures in question and that the results would be notified to the TMB before 31 March 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 this April. 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 mesures".

361. In taking note of the above communication of Japan, 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.

[143] Point 4.4 of the working procedures adopted by the TMB (see G/RMB/R/1) states that "information provided to the TMB by WTO Members shall remain confidential to the TMB, if supplied on a confidential basis".

362. In January 2001, the TMB sought information from Slovenia on the implementation of the second phase of its progressive phase-out programme.[144] In reply, Slovenia confirmed that the quantitative restrictions which were to be eliminated on 1 January 2001, according to the phase-out programme already presented, had actually been eliminated.

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

363. 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.

1. Developments During the First Stage of the Integration Process

(a) Communications received with reference to Article 3.3

364. During Stage 1 and prior to the adoption of the TMB's first comprehensive report, the TMB received three communications with reference to Article 3.3 from the European Community. Two notifications contained agreed changes increasing the quantitative limits maintained *vis-à-vis* the Czech Republic; Hungary; Poland; Romania and the Slovak Republic, and increasing the consultation levels with Egypt; Malta; Morocco and Tunisia. The third notification stated that, as a result of the completion of the customs union between the European Community and Turkey, the consultation levels notified by the EC under Article 3.1 *vis-à-vis* Turkey had been eliminated as of 1 January 1996. The TMB took note of this information.

(b) Observations made by the TMB in its first comprehensive report

365. In its first comprehensive report, the TMB recalled in particular the provision in Article 3.3 calling on Members to provide to the TMB "notifications submitted to any other WTO bodies with respect to any new restrictions or changes in existing restrictions on textile and clothing products, taken under any GATT 1994 provisions ...". In this regard, the TMB was aware that some measures had been taken resulting in the introduction of quantitative restrictions or changes in existing quantitative restrictions on textile and clothing trade. Citing Article 2 of the ATC, Hong Kong had formally requested consultations with Turkey in February 1996 under GATT Article XXII:1 and pursuant to DSU Article 4, regarding the unilateral imposition of quantitative restrictions by Turkey on imports of a broad range of textile and clothing products from Hong Kong, effective 1 January 1996. Hong Kong had considered these restrictions to be inconsistent with certain GATT Articles and with obligations under Article 2 of the ATC. Turkey had accepted to enter into bilateral consultations with Hong Kong in order to discuss this matter, which, in the view of Turkey, was covered by Article XXIV:8(a) of the GATT 1994. Turkey further stated that the measures in question had been adopted in order to fulfil the obligations pursuant to the relevant decision of the EC-Turkey Association Council under which Turkey was expected to transpose the EC's import regulation into its domestic legislation. Subsequently, requests to join in these consultations pursuant to DSU Article 4.11 were made by Brazil; Canada; European Community; India; Korea; Malaysia; Peru; Philippines and Thailand. India, in March 1996, and Thailand, in June 1996, formally requested consultations with Turkey under GATT Article XXIII:1 and Article 4 of the DSU, also citing Article 2 of the ATC. Hong Kong and India had provided copies of their requests for consultation with Turkey to the TMB. The TMB observed that the notification of these measures, which it understood had been submitted to the relevant WTO body, had not been provided by the Member adopting them to the TMB for its information, in accordance with Article 3.3.[145]

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[144] See paragraph 357.
[145] G/L/179, paragraph 245.

366. The TMB also stated that some measures had been reported to the Committee on Balance-of-Payments Restrictions, which appeared to represent changes in existing restrictions affecting textiles and clothing trade. Nigeria reported the removal of textile fabrics and articles from its Import Prohibition List; Pakistan referred to the elimination of certain products from its Negative List with the imports of most textile items being allowed as from 1994-1995; Tunisia reported that the list of products subject to import restriction (List B) had been shortened in November 1995 by eliminating made-up textile products; India advised of a liberalization of its import regime with restrictions being lifted on a number of products including some clothing. In addition, India notified to the Committee a liberalization of quantitative restrictions maintained on imports since December 1995. The TMB observed that none of the notifications of these measures had been provided to the TMB, for its information, by the Members concerned. It is important that the TMB also be informed about the changes in existing restrictions on textile and clothing products taken under any GATT 1994 provision, in accordance with Article 3.3.[146]

2. Developments Since the Adoption of the TMB's First Comprehensive Report

(a) Communications received by the TMB under Article 3.3

367. In November 1997, the TMB received a joint communication from the European Community and Turkey under Article 3.3. This communication consisted of a copy, for the TMB's information, of the standard format 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.

368. In May 1998, the European Community 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 communication from the parties to the European Community/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 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. It should be noted that according to the communication, "arising from [its] commitments and obligations, Turkey no longer maintain[ed] any quantitative limits *vis-à-vis* the Czech Republic, Hungary, Poland, Romania, the Slovak Republic, Bulgaria, Mongolia, Malta, Morocco and Tunisia as from 1 January 1998". The communication listed in detail the restrictions applied on imports from the following WTO Members: Argentina; Brazil; Egypt; Hong Kong, China; India; Indonesia; Korea, Macau; Malaysia; Pakistan; Peru; Philippines; Singapore; Sri Lanka and Thailand.

369. In another joint communication, dated April 2000, the European Community 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 Community/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

[146] G/L/179 paragraphs 246 and 247.

the provisions of Article XXIV of GATT 1994". The TMB took note of this information. This taking note was without prejudice to the rights and obligations of Members under the WTO.[147]

370. In January 1998, the European Community 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 Community 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.

371. Subsequently, in January 2000, the TMB considered another notification received from the European Community 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.

372. In January 1998, the European Community notified, under Article 3.3, that it no longer maintained any quantitative limits *vis-à-vis* imports from Bulgaria; the Czech Republic; Hungary; Poland; Romania and the Slovak Republic, with effect from 1 January 1998. The TMB took note of this information.

(b) Reverse notifications and restrictions not notified (Article 3.4)

373. Article 3.4 allows any Member to make reverse notifications to the TMB for information purposes, in regard to the GATT 1994 justification for measures maintained, or in regard to any restrictions that may not have been notified under the provisions of this Article. Actions with respect to such notifications may be pursued under relevant GATT 1994 provisions or procedures in the appropriate WTO body. No notification was made explicitly under this provision (nor during the first or the second stage of the integration process).

D. OBSERVATIONS WITH RESPECT TO THE APPLICATION OF ARTICLE 3 DURING STAGE 2

374. Since Article 3.1 specifies a short time-frame (i.e. within 60 days following the entry into force of the WTO Agreement) for providing notifications on restrictions other than those maintained under Article 2.1, it is not surprising that practically no substantive notification was addressed to the TMB during Stage 2, with reference to the provisions of Article 3.1. While the only notification received (from Mongolia[148]) served essentially transparency purposes, it has to be reiterated that Article 3 does not require Members to provide notifications to the effect that they do not maintain restrictions falling under the provisions of this Article.

375. As regards the implementation of the programmes of progressive phase-out of restrictions pursuant to Article 3.2(b), one Member (Hungary) implemented its respective programmes in full and well ahead of schedule, while another Member (Slovenia) is on track with the implementation of its programme notified. The communication received from another Member (Japan) implied that while, for the time being, the measures in question would continue to be applied, they would be completely phased out at the latest by the date of the termination of the ATC.

[147] It is appropriate to observe that no information was provided to the TMB regarding the quantitative limits applied by Turkey for the years 1999 and 2001.

[148] See paragraph 352.

376. 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.[149] 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.

377. With regard to the previous paragraph, relying on notifications to and reports of other WTO bodies, the TMB makes the observations as follows.

1. Quantitative Restrictions Introduced by Turkey

- In March 1998, the DSB established a panel, pursuant to the request by India, to examine, in light of GATT and the ATC, the imposition of quantitative restrictions by Turkey on a broad range of textile and clothing products from India as from 1 March 1996. India claimed that the restrictions imposed by Turkey were inconsistent with Turkey's obligations under Articles XI and XIII of GATT and were not justified by Article XXIV of GATT, which did not authorize the imposition of discriminatory quantitative restrictions, and that the restrictions were inconsistent with Turkey's obligations under Article 2 of the ATC. India also claimed that the restrictions appeared to nullify or impair benefits accruing to it directly or indirectly under GATT and the ATC. The Panel concluded that the measures adopted by Turkey were inconsistent with the provisions of Articles XI and XIII of GATT, and consequently, with those of Article 2.4 of the ATC. The Panel rejected Turkey's defence that the introduction of any such otherwise GATT/WTO incompatible import restrictions would be permitted by Article XXIV of GATT. The Panel also concluded that, to the extent that Turkey had acted inconsistently with the provisions of covered agreements, it had nullified or impaired benefits accruing to India under these agreements. The Panel recommended that the DSB request Turkey to bring its measures into conformity with its obligations under the WTO Agreement. Subsequently, Turkey appealed certain issues of law and legal interpretations in the Panel report. While the Appellate Body concluded that the Panel had erred in its legal reasoning regarding certain aspects involved in the case, it upheld the Panel's conclusion that Article XXIV did not allow Turkey to adopt, upon the formation of the customs union between the European Communities and Turkey, quantitative restrictions on imports of textile and clothing products which had been found to be inconsistent with Articles XI and XIII of the GATT 1994 and Article 2.4 of the ATC. At its meeting of 19 November, the DSB adopted the Appellate Body report and the Panel report, as modified by the Appellate Body report. Furthermore, Turkey stated its intention to comply with the recommendations and rulings of the DSB;

- Pursuant to Article 21.3(b) of the DSU, India and Turkey reached a mutual agreement with respect to the reasonable period of time for Turkey's implementation of the DSB recommendations and rulings. This was notified to the Chairman of the DSB in January 2000. According to this agreement, the reasonable period of time would expire on 19 February 2001. Turkey confirmed that it maintained quantitative

[149] For the TMB's observations with respect to compliance during Stage 1, see paragraphs 365 and 366.

restrictions against imports from India on only 19 categories of textile and clothing products, as notified earlier, and it undertook to refrain from making more restrictive the import arrangements affecting any of the 19 items. Furthermore, Turkey would increase the size of the quotas in 6 categories for the year 2000 by 50 per cent over the year-2000 levels initially published[150], and for the remaining part of the reasonable period of time by 50 per cent over the year-2000 levels, on a *pro rata* basis. Finally, Turkey would grant to India treatment no less favourable than that granted to any other WTO Member with respect to the elimination or modification of the quantitative restrictions in question. While Turkey had implemented the increase of the size of the relevant quotas, its periodic status reports provided to the DSB were limited to mentioning that the necessary preparatory work and consultative process has been undertaken, without indicating how Turkey planned to implement the panel recommendations and rulings by the expiration of the reasonable period of time;

- In a subsequent joint communication, dated 8 March 2001, India and Turkey informed the Chairman of the DSB about "agreed procedures between India and Turkey under Articles 21 and 22 of the DSU in the follow up to the dispute" in question. According to this communication, which the DSB formally took note of, the two parties would hold consultations within 30 days to discuss compliance of the recommendations of the DSB by Turkey, while reserving all the rights accruing to India under the DSB.[151]

- At the meeting of the DSB on 16 May 2001, as the consultations mentioned above were still ongoing between India and Turkey, India stated, *inter alia*, that "the progress achieved thus far had not been entirely satisfactory. While India continued its efforts in this regard, the matter could not be prolonged unduly, in particular since the reasonable period of time had already expired on 19 February 2001. Therefore, if a mutually acceptable solution could not be agreed within the next few days, India might be left with no alternative but to exercise its rights under the bilateral agreement of 8 march 2001 and the DSU provisions". According to Turkey, a counter-proposal had been submitted to India and Turkey was awaiting a response.

- On 6 July 2001, India and Turkey notified the DSB that they had reached a mutually satisfactory solution regarding implementation by Turkey of the conclusions and recommendations adopted by the DSB.

2. Quantitative Restrictions Maintained by India on Imports of, *inter alia*, Textile Products

- At the request of the United States, the DSB established a panel in November 1997 to examine the quantitative restrictions maintained by India on a number of agricultural, textile and industrial products. (As far as textile products are concerned, these restrictions had been notified by India under Article 3.1 of the ATC, citing Article XVIII:B of GATT 1994 as their justification.[152]) The United States considered that quantitative restrictions maintained by India, including, but not limited to, the more than 2,700 agricultural and industrial product tariff lines notified to the WTO, appeared to be inconsistent with India's obligations under Articles XI:1 and XVIII:1 of GATT 1994 and Article 4.2 of the Agreement on Agriculture. Furthermore, the import licensing procedures and practices of the Government of India were inconsistent with fundamental WTO requirements as provided in

[150] For the year 2000, this is also reflected in the joint communication by the European Community and Turkey submitted to the TMB under Article 3.3. See paragraph 369.
[151] See WT/DS34/13.
[152] See paragraph 346.

Article XIII of GATT 1994 and Article 3 of the Agreement on Import Licensing Procedures;

- It should be noted that India had been consulting regularly under Article XVIII:B in the Committee on Balance-of-Payments Restrictions since 1957. Full consultations started in December 1995 and resumed in January 1997. In May 1997, India notified to the Committee the import restrictions under Article XVIII:B that were being maintained for the period 1997-2002, together with a time-schedule for their removal during nine years. In June 1997, India submitted a plan containing a time-schedule of seven years, under which most of the import restrictions would be eliminated in two phases of a length of three years each and a number of items of high sensitivity or bound at very low rates of duty would be eliminated during the third phase, reduced from three years to one. However, since no consensus on the revised proposal on the time-schedule could be reached, the meeting was closed on 1 July 1997, noting that the report of the Committee to the General Council would record the views expressed in the Committee. Subsequent to the impasse in the Committee, India held consultations under GATT Article XXII with Canada; Switzerland; the European Communities; Australia; New Zealand and the United States. During these consultations, India arrived at a mutually agreed solution with all the above Members, except the United States, on the basis of a six-year time-schedule for removal of its import restrictions;

- The Panel established against this background concluded, *inter alia*, that the measures in question, applied by India, violated Articles XI:1 and XVIII:1 of GATT 1994 and were not justified by GATT Article XVIII:B. The Panel recommended that the DSB request India to bring these measures into conformity with its obligations under the WTO Agreement. The Panel stressed, however, that its findings and recommendations did not imply that the measures at issue had to be removed instantly. The Panel referred also to the fact that "the DSU provides for 'prompt compliance' with recommendations of the DSB but it contemplates the possibility that it might be impractical for a Member to comply immediately, in which case 'the Member shall have a reasonable period of time in which to do so' (Article 2.13)". Finally, it suggested that the parties negotiate an implementation/phase-out period. Though India appealed certain issues of law and legal interpretation developed by the Panel, the Appellate Body upheld all of the findings of the Panel. The Panel report and the Appellate Body report were adopted on 22 September 1999 by the DSB;

- Subsequently, on 28 December 1999, India and the United States notified to the DSB that they had reached a mutual agreement under Article 21.3(b) of the DSU with respect to the reasonable period of time for India's implementation of the DSB rulings and recommendations. According to this joint notification, "the reasonable period of time shall finally expire on 1 April 2001, as follows:

  (a) on or before 1 April 2000, India may notify to the United States a listing of up to but no more than 715 items of the 1,429 items on which India currently maintains quantitative restrictions, and with respect to the up to 715 items so notified, the reasonable period of time shall expire on 1 April 2001; and

  (b) with respect to all the other items, the reasonable period of time shall expire on 1 April 2000";

- In a status report on implementation, India notified the DSB (in July 2000) that pursuant to the mutual agreement, as above, "on 31 March 2000, India notified to the

United States a list of 715 items in respect of which India maintains quantitative restrictions and for which the reasonable period of time will expire on 1 April 2001. In respect of all other items for which the reasonable period of time expired on 1 April 2000, […] India had implemented the recommendations and rulings of the DSB by 1 April 2000". In April 2001, India announced at the meeting of the DSB that, with effect from 1 April 2001, it had removed the quantitative restrictions on imports in respect of the remaining 715 items and had thus implemented the DSB's recommendations;

- As a result, as regards restrictions on imports of textile and clothing products, India ceased to maintain measures falling under Article 3 of the ATC. While observing that India had eliminated all the restrictions previously notified under Article 3.1, the TMB also observes that it has not been provided with information, pursuant to Article 3.3, regarding the gradual and subsequent full elimination of these restrictions.

3. Changes, if Applicable, in Restrictions Applied with Reference to Article XVIII:B of GATT 1994 by Some WTO Members

- The TMB observes that though there was no information to suggest that Egypt had not removed the conditional import prohibition on textiles, as scheduled (i.e. on 1 January 1998)[153], no information has been provided pursuant to Article 3.3 by Egypt to that effect.

- In November 1998, Pakistan presented to the Committee on Balance-of Payments Restrictions a three-year time table for the removal of its remaining import restrictions by the fiscal year 2001 (i.e. until June 2002). At the meeting of the Committee, held in May 2000, it was accepted that Pakistan would present a full notification regarding the status of implementation of its phase-out plan, and any other measures taken for balance-of-payments purposes. In a further notification, made on 4 July 2000, under paragraph 9 of the Understanding on the Balance-of-Payments provisions of GATT 1994, Pakistan stated, *inter alia*, the following: "As for the phase-out schedule for quantitative restrictions maintained under Article XVIII(b) of GATT 1994 submitted in November 1998, the Government of Pakistan has been obliged to suspend the implementation of the schedule due to the adverse balance-of-payments position presently faced by Pakistan. Nevertheless, Pakistan remains committed to the removal of restrictions as soon as feasible. The timing of such a phase-out will depend upon the improvement of our BOP position. Pakistan's BOP situation can improve if increased market access is provided by our major trading partners in areas of export interest to Pakistan, especially in the field of textiles, and that there is timely disbursement of funding from International Financial Institutions". Consultations with Pakistan were resumed in the Committee in November 2000. Appreciation was expressed by Members for Pakistan's decision to implement its existing phase-out plan, in spite of the fragility of the country's BOP situation. The Committee took note of Pakistan's commitment to remove the first portion of the balance-of-payment restrictions before the end of the year and to remove in two portions all the remaining restrictions by the end of June 2001 and 2002, respectively, according to the scheduled phase-out. In a subsequent notification, made in December 2000, which constituted a follow-up to the Committee's deliberations of the previous month, Pakistan advised the Committee on Balance-of-Payments Restrictions of changes implemented in the so-called Import Trade and Procedures Order, listing a number textile and clothing items (altogether 8

[153] See paragraph 347.

"serial numbers", consisting of several HS headings) regarding which imports had been permitted. The TMB assumes that this brought about changes in the restrictions maintained by Pakistan referred to in Article 3.1, and, therefore, information in this regard should also have been provided to the TMB in accordance with Article 3.3;

- 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.

E. VIEWS AND COMMENTS OF WTO MEMBERS IN RESPONSE TO TMB'S REQUEST FOR INFORMATION AND/OR TO FURTHER SPECIFIC QUESTIONS RAISED BY THE TMB

378. In reply to the TMB's request for information in the context of the preparation of the present report, with reference to the provisions of Article 3.3, Turkey stated the following:

"With regards to the product categories originating in the countries contained in the notification dated 5 January 2001 and coded G/TMB/N/364 [[154]] which was submitted in compliance with the provisions of Article 3.3;

- The quota limits have been increased by the growth rates applied in accordance with Article 2 of the ATC.

- In addition to that, since the list of integrated products shall enter into effect as of 1 January 2002, the product categories contained in that list will consequently be excluded from the products subject to quantitative restrictions.

There is not any other change apart from those mentioned above."

379. In light of the above, the TMB decided to seek clarification from Turkey as to whether this statement suggested that, as a consequence, the product categories not contained in that list would not be excluded from the products subject to quantitative restrictions and that, therefore, the restrictions referred to in G/TMB/N/352 would remain in effect to the extent that the products in question would not be integrated on 1 January 2002. If this reading were correct, the TMB appreciated receiving information on the WTO provision under which these quantitative restrictions would continue to be maintained.

380. In response, Turkey stated that "the preliminary information provided by Turkey concentrates mainly on the implementation issues and developments of the second integration stage; and it does not intend to cover third integration stage implementation issues that it considers early at this stage. The only information pertaining to the third stage refers to Turkey's notification made on 22 December [2000] on its integration programme for third stage. Therefore, the scope of the information supplied by Turkey is confined to the limits of this programme, and does not cover non-integrated items".

[154] This appears to be a mistaken reference, since G/TMB/N/364 contains notification of the Stage 3 integration programme. Turkey probably referred to G/TMB/N/352 (joint notification of the European Community and Turkey) made under Article 3.3.

VI. ADMINISTRATION OF RESTRICTIONS NOTIFIED UNDER ARTICLE 2. CHANGES IN PRACTICES, RULES, PROCEDURES AND CATEGORIZATION OF PRODUCTS. CHANGES IN THE LEVEL OF RESTRICTIONS AS A RESULT OF INTEGRATION OF PARTS OF THE RESPECTIVE RESTRICTIONS. (IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 4)

A. ADMINISTRATION OF RESTRICTIONS (ARTICLE 4.1)

381. 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".

382. During Stage 1, the TMB had reviewed the administrative arrangements notified by Canada, the European Community and the United States.[155] Such administrative arrangements entrusted the exporting countries 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.

383. Since then, in April 1998, Canada submitted a detailed notification of administrative arrangements concluded with the Czech Republic. In addition, the TMB also received a notification of administrative arrangements concluded between the United States and Oman. The arrangements concluded with Oman also provided the importing Member with the possibility of making adjustments to the levels of existing restrictions. The TMB sought confirmation from the United States, *inter alia*, of its understanding that the statement, made by the United States when the TMB had examined the administrative arrangements concluded by the United States with several other WTO Members, that "when provisions of the administrative arrangements were inconsistent with the ATC, the provisions of the ATC would apply", also applied to the administrative arrangements concluded between the United States and Oman. The United States confirmed the Body's understanding. Apart from the notification of these additional administrative arrangements, the TMB has not received, during Stage 2, any specific notification 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

384. 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".

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

[155] See paragraphs 297 to 304.

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

387. The administrative arrangements concluded by the European Community foresee consultations with the exporting Members with a view to honouring these obligations (see paragraph 385). The administrative arrangements concluded by Canada and the United States do not contain specific provisions for similar types of cases.

1. Developments Regarding the Implementation of Articles 4.2 and 4.4 During the Period Covered by the First Comprehensive Report: Changes in the Rules of Origin Applied by the United States

388. During Stage 1, the TMB received only one communication which referred specifically to the provisions of Article 4. In July 1996, the Philippines submitted a communication, pursuant to Articles 8.5 and 4.2, regarding changes in the US rules of origin[156], which, it was argued, adversely affected imports into the United States of certain textile products from the Philippines and upset the balance of rights and obligations between the two parties under the ATC. At its meeting in July 1996, the TMB was informed by the Philippines and the United States that they had decided to continue consultations on the matter, and therefore, requested the TMB to defer its consideration of this communication. At the request of the Philippines, this issue was kept on the agenda of subsequent TMB meetings, but its consideration was repeatedly deferred, as both Members indicated that they preferred to wait for the outcome of their bilateral consultations. At its meeting in March 1997, the TMB took note of a further communication from the Philippines whereby it requested that the matter it had raised regarding changes in the US rules of origin be removed from the TMB's agenda, in view of a mutually agreed solution between the Philippines and the United States. The Philippines stated that this was without prejudice to its rights under the ATC, in particular under the provisions of Article 8. Since then the TMB has not received any further communication from the parties.

389. As noted in Chapter VII, the mutually satisfactory solution reached between Pakistan and the United States following debits made by the United States to Pakistan's quotas of bedsheets on account of alleged circumvention of Pakistani companies, also provided a resolution of matters on US rules of origin charges with respect to imports of bedsheets and pillowcases from Pakistan to the United States.[157] As observed by the TMB, neither of the two Members concerned had previously referred to the Body any matter regarding the changes in US rules of origin affecting the above products. Nor did the communications received from the United States and Pakistan refer to the provisions of Article 4.

390. The TMB was informed that, on 22 May 1997, the European Community had requested consultations with the United States pursuant to Article 4 of the Understanding of Rules and Procedures Governing the Settlement of Disputes, Article 8.4 of the Agreement on Textiles and Clothing, Article 7 of the Agreement on Rules of Origin, Article 14 of the Agreement on Technical Barriers to Trade and Article XXII of the GATT 1994 regarding the change to US rules of origin for textile and clothing products. In this submission, the European Community referred to the fact that the United States had introduced changes to its rules of origin for textile and clothing products, which entered into force on 1 July 1996. Some of these rules, in particular the rules contained in Section 334 of the Uruguay Round Agreements Act and implemented through customs regulation,

[156] These changes were implemented by the United States on 1 July 1996.
[157] See paragraph 456.

adversely affected exports of EC's fabrics, scarves and other flat textile products to the United States. As a result of this change, the European Community products were no longer recognized in the United States as being of EC origin and had lost the free access to the US market that they enjoyed before.

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

392. In communications, dated June 1997, addressed to the Dispute Settlement Body and to the two Members concerned, the Dominican Republic; Honduras; Hong Kong, China; India; Japan; Pakistan and Switzerland notified that they considered themselves to have a substantial trade interest in the consultations requested by the European Community and, therefore, wished to join in these consultations.

393. The European Community did not refer the issue subject to its complaint to the TMB. However, the European Community commented on this issue in a communication to the TMB in response to the TMB's request for information regarding the implementation of particular ATC provisions, in the context of the TMB's preparation of its first comprehensive report.[158]

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

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

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

[158] See G/L/179, paragraph 262.

TMB, as required by the ATC, any difficulties that they could have had with the revised US rules of origin.[159]

397. The CTG also considered this issue in the context of its major review of the first stage of implementation of the ATC, in accordance with Article 8.11. Some Members considered that the changes made in rules of origin by one Member (the United States) 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. 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. The CTG 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 would not be upset.[160]

2. Developments During the Second Stage of the Integration Process

398. During Stage 2, the TMB did not receive any notification which refer to the implementation of the provisions of Articles 4.2 and 4.4. However, as communicated by the parties, a new Memorandum of Understanding, signed in May 2000, by the Governments of the United States and Pakistan, also included issues concerning bedsheets and pillowcase categories of both cotton and man-made fibre which had been raised under Articles 4 and 5 of the ATC.[161] Furthermore, the TMB was informed that further developments had taken place with respect to the issue of the changes to US rules of origin for textile and clothing products, referred to, in particular, in paragraphs 390 to 397 above.

399. At the DSB meeting in January 1998, Hong Kong, China expressed concern with regard to the lack of notification of a mutually agreed solution regarding the issue raised by the European Community with respect to the change to US rules of origin for textile and clothing products. In February 1998, the United States and the European Community notified the details of the mutually agreed solution they had reached regarding this issue to the DSB and the relevant WTO bodies, including the TMB.

400. In November 1998, the European Community requested consultations with the United States regarding the same issue, pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article 8.4 of the Agreement on Textiles and Clothing, Article 7 of the Agreement on Rules of Origin, Article 14.1 of the Agreement on Technical Barriers to Trade (TBT Agreement) and Article XXII of the GATT 1994. The European Community considered that the United States had not implemented its commitments as contained in the mutually agreed solution, with the result that, in the view of the European Community, the situation remained

[159] See G/L/134, paragraphs 16.22 and 16.23.
[160] See G/L/224, paragraphs 25, 26 and 28.
[161] See paragraphs 459 to 464.

inconsistent with US obligations under WTO rules. The submission stated, *inter alia*, that the changes in the US rules of origin caused precisely the effects listed in Article 4.2 and, therefore, the United States should have initiated consultations with the European Community prior to the implementation of such changes.

401. In communications addressed to the Dispute Settlement Body and to the two Members concerned, the Dominican Republic; El Salvador; Honduras; Hong Kong, China; India; Japan; Pakistan and Switzerland notified that they considered themselves to have a substantial trade interest in the consultations requested by the European Community and, therefore, wished to join in these consultations.

402. This issue was not referred to the TMB. In July 2000, the United States and the European Community notified to the DSB and to the relevant WTO bodies, including the TMB the details of the new mutually agreed solution of this issue that they had reached in their consultations. According to this notification, the new agreement (reflected in a Proces-Verbal) amended the previous one (concluded by the two parties in July 1997) "with a view to achieving a mutually satisfactory resolution toward facilitating and developing trade in fabrics imported into the European Communities at loom state to be dyed, printed and further finished in the EC, and certain flat products resulting therefrom". In essence, the agreement re-established the pre-1996 rules of determining origin of fabric and some made-up products (such as bedlinen, table linen, tents, quilts, etc.) of export interest to the EC companies. According to these rules, if the products in question were to undergo dyeing and printing and at least two subsequent finishing operations, the origin would be determined by where the product was processed. The United States also accepted that a single import visaed invoice/licence could be used by the European Community on multiple shipments of such goods, if certain conditions were met.

3. Views and Comments of WTO Members in Response to the TMB's General Request for Information and/or to Further Queries to Certain WTO Members

403. One of the replies received from Members to the TMB's request for information regarding the implementation of particular ATC provisions also addressed the changes in the US rules of origin. The contribution received from the ITCB members stated that "the TMB should detail further changes made by the US in its rules of origin for selected products following a bilateral deal with the EU. The report should bring out that theses changes failed to restore the pre-ATC situation with respect to a number of other products that are of substantial export interest to restrained Members. It should also bring out that, contrary to the principle of Article 1.6, the US failed to provide non-discriminatory treatment with respect to single visas for multiple shipments, that was extended to imports of products from the member states of the EU". The report should also "bring transparency on changes in classification of products/categories, and in technical requirements effected during the implementation process". It was also hoped that the report would "also provide an assessment of the effect of theses changes and measures on the rights of restrained Members particularly in light of the object and purpose of the ATC and the meagre results towards the attainment of its objectives".

404. In response to additional clarifications sought by the TMB, the ITCB members stated that "following a bilateral deal [between the United States and the European Community regarding the changes effected by the United States to its rules of origins with respect to textile and clothing products effected in July 1996], the US rectified the situation mainly with respect to products of export interest to the EU through Section 405 of its Trade and Development Act of 2000 enacted on 18 May 2000." The submission made by the ITCB members detailed these changes (see Attachments 1 and 2 to this Chapter). Furthermore, with respect to the rule permitting a single visa for multiple shipments only from the member states of the European Union, the ITCB members "confirm the reference to document WT/DS151/10 of 31 July 2000. The discriminatory treatment entailed by this provision vis-à-vis other WTO Members does not appear to be justified under the fundamental WTO principle of non-discrimination which, as stated earlier [by the ITCB], is not

derogated or excepted from the ATC by virtue of Article 1.6 thereof". As regards changes in classification of products/categories, ITCB members urged the TMB to ascertain the necessary information from the restraining Members. By way of illustration they attached a list of selected changes effected by the United States (see Attachment 3 to this Chapter).

405. In reply to additional clarifications sought by the TMB, Canada stated that it "has not changed or altered its classification of products/categories for the purposes of Canada's restraints since the start of the ATC". The European Community replied that "the EC has not effected any changes to its classification of products/categories giving rise to any difficulties, of which it is aware, with WTO Members against which it maintains restrictions".

406. Neither the communication of the United States in response to the TMB's general request for information and comments, nor its reply to additional clarifications sought by the TMB addressed issues related to changes in rules of origin and in classification of product categories.

C. INTEGRATION OF PARTS OF A RESTRICTION (ARTICLE 4.3) AND RELATED ACTIONS UNDER ARTICLE 4.4

1. Developments During the Second Stage of the Integration Process

407. Article 4.3 provides that "if a product which constitutes only part of a restriction is notified for integration pursuant to the provisions of Article 2, Members agree that any change in the level of that restriction shall not upset the balance of rights and obligations between the Members concerned under this Agreement".

408. Since no part of a restriction was integrated during the first stage of the integration process, the provisions of Article 4.3 were not invoked. This statement, however, does not apply to Stage 2, since, in certain cases, parts of restrictions became integrated and corresponding changes in the level of the respective remaining restrictions were implemented. This applied in particular to 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, and it would appear that the United States implemented downwards adjustments in the levels of the respective restraints or limits. Canada made similar adjustments in two cases.

409. It should be noted, however, that no matter has been referred to the TMB with specific reference the provisions of Articles 4.3 and 4.4.

2. Views and Comments of WTO Members in Response to the TMB's General Request for Information and/or to Further Queries to Certain WTO Members

410. One of the replies received from Members to the TMB's request for information regarding the implementation of particular ATC provisions, addressed the issue of "the downward adjustment of quotas as a result of partial integration of certain product categories in stage 2". According to the communication received from members of the ITCB, the TMB should also "comment on the results of the methodology employed by the restraining Members and the outlook for stage 3". It was also hoped, as mentioned in paragraph 403, that the report would "also provide an assessment of the effect of theses changes and measures on the rights of restrained Members particularly in light of the object and purpose of the ATC and the meagre results towards the attainment of its objectives".

411. In the communication of Canada, provided in response to the specific question put by the TMB with respect to the issue raised in paragraph 408, it was stated that "the only time Canada has adjusted downward any restraint level when products have been removed from coverage under a restraint (i.e. partial restraint liberalization) was in July 1997 when Canada removed the restraints on tailor-collared shirts. This product fell under an aggregate restraint in the case of two Members, India and Macau, China, and Canada reduced the aggregate level accordingly. The restraints against the

other 21 WTO Members affected were specific restraints on tailor-collared shirts and consequently the restraints were removed entirely. Canada did not adjust downward the restraint levels when it removed a number of products, such as rainwear, babies outwear, women's and girls' ensembles and various women's, girls' and children's blouses and shirts, from restraint on 1 January 1998, pursuant to ATC Article 2.15. Canada will also not be adjusting any of the levels of the restraints it is partially integrating in the third phase. This has resulted, and will result, in a de facto increase in the restraint level for the remaining products under restraint".

412. In reply to some additional clarifications sought by the TMB, the European Community confirmed that it "has not made any downward reductions of quota".

413. The response of the United States to additional clarifications sought by the TMB contained, *inter alia*, the following: "As provided for in Articles 4.3 and 4.4, the adjustment of quotas pursuant to the second stage of integration was conducted in such a way as to ensure that the balance of rights and obligations between Members was scrupulously maintained. Article 4.4 requires that Members be notified in advance of such action, rather than the TMB, and the United States fully complied with the notification requirement. Of course, any individual exporting Member was free to refer any disputes arising from the adjustment of quotas to account for the implementation of our second stage integration commitments to the TMB in the event of a dispute, but no exporting country chose to do so".

D. RELATED ISSUES

414. In examining, pursuant to the provisions of Article 8.1 and on the basis of the limited information available to it, the introduction by the United States of a new restriction on Turkey's exports of certain textile products, as part of a broader understanding reached between the two Members, the TMB, *inter alia*, made a number of comments and observations in relation to the possibility of introducing new restraints with reference to the provisions of Article 4.[162]

E. COMMENTS AND OBSERVATIONS BY THE TMB

1. Changes in the Rules of Origin Applied by the United States

415. As reflected in Section B of this Chapter, the changes implemented in 1996 by the United States in its rules of origin caused serious concern to several WTO Members. During Stage 2, following the renewed request for consultations by the European Community, a new mutually agreed solution was found between the European Community and the United States, which was subsequently notified to the DSB.[163] The ITCB members observed in their replies to the TMB that while this bilateral solution rectified the situation mainly with respect to products of export interest to the European Community, these changes failed to restore the pre-ATC situation with respect to a number of products of substantial export interest to restrained Members.[164] The TMB also noted that none of the comments received from the United States included any reference to this subject matter.

416. The TMB recalled that during the second stage of the integration process it had not received any notification requesting it to review any aspect of this matter under Articles 4.2 and 4.4 and to make recommendations as provided for in Article 8. Against this background, neither has it been specifically requested to take up this matter, nor has the TMB acquired sufficient technical expertise and knowledge to provide an assessment on these developments. Noting the serious concerns expressed and relevant additional details provided by the ITCB members in their contributions in the form of comments, the TMB understood 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

[162] See paragraphs 488 to 495.
[163] See paragraph 402.
[164] See paragraphs 403 and 404.

rights under the ATC. The TMB observed that, pursuant to Article 4.2, the introduction of changes, *inter alia*, of rules of origin "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". Furthermore, Article 4.4 provides the possibility of requesting consultations and in the absence of a mutually satisfactory solution, of referring the matter to the TMB for its recommendations. In case of continued problems in this area and of perceived lack of observance of the requirements defined in Article 4.2, the Members concerned should make use of the provisions provided by Article 4.4.

417. In addition, against this background, it would be appropriate for Members not to implement important changes in their respective rules of origin during the remaining period of ATC implementation.

418. With respect to the issue of single visa for multiple shipments, the TMB noted that the visa arrangements concluded between the United States and its trading partners formed part of the administrative arrangements notified by the United States under Article 2.17. These administrative arrangements also provide for consultation with a view to addressing issues related to their implementation. Therefore, it seems to the TMB that perceived problems regarding this specific matter could also be pursued under the provisions of Article 2.17 and, if necessary, pursuant to Article 2.21.

2. Changes in Classification of Products/Categories and in Technical Requirements During Stage 2

419. The TMB recalled that ITCB members had requested that "the report should bring transparency on changes in classification of products/categories, and in technical requirements effected during the implementation process". Since the TMB did not have any information at its disposal in this regard and also that no such matter had been referred to it by any Member under the provisions of Article 4, it decided to seek additional information and comments related, among others, to this issue from Canada, the European Community and the United States. The replies of Canada and the European Community are reflected in paragraph 405, while the United States did not provide any comment with respect to this matter.

420. The TMB noted with appreciation that ITCB members had provided it with a selected list of such changes implemented by the United States (see Attachment 3 to this Chapter). It was observed, *inter alia*, that:

- the bulk of the changes reported related to the period of the first stage of the integration process;

- the type of changes listed was very wide-ranging and some of these changes were of a very technical nature. Therefore, it was not possible for the TMB to assess their impact without more information and the necessary technical knowledge;

- the list contained certain issues such as the implementation of minimum bond requirements, whose potential adverse effect could be easily understood (though the TMB had no knowledge of the reasons that could motivate such a decision);

- with respect to some other issues, such as the modification of the flammability standards, it appeared to be questionable on what grounds they could be challenged (unless the modification of the requirements was proven to be unjustified).

421. In any event, the TMB reiterated that the type of changes referred to in Article 4.2 should be implemented in full compliance with the provisions of that Article, and that the provisions of Article 4.4 are also available, should the need arise.

3. The Effect of Integration of Parts of a Restriction

422. Recalling that ITCB members expected 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, the TMB made the points reflected below.

(a) Implementation during Stage 2 of the integration process

423. The provisions of Article 4.3 were not applied by the European Community (since it did not integrate products forming part of restrictions), while, as reported by it, Canada reduced the respective aggregate levels on two occasions. Though the United States did not provide details in this regard, based on all indications, it would appear that the United States implemented downwards adjustments in the respective (mostly aggregate or group) levels in each and every case when only part of a restriction became integrated.

424. The TMB noted that, in the view of the United States, the adjustment of the respective restraint levels was conducted in such a way as to ensure that the balance of rights and obligations between Members was scrupulously maintained. The TMB observed, however, that while the United States had emphasized that it had fully complied with the requirements of Article 4.4 to provide advance notification to the Members concerned, Article 4.4 also provided "… wherever possible, [to] initiate consultations with the affected Member or Members prior to the implementation of such changes, with a view to reaching a mutually acceptable solution…".

425. In the reading of the TMB, Article 4.3 allows for such adjustments (i.e. downwards 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.

(b) Outlook for Stage 3

426. As reflected in details in Chapter II of this report, Canada will integrate parts of respective specific limits or sub-limits in an important number of cases during Stage 3. Canada also notified that "in order to maximize the benefits of this integration to exporters, the restraint levels for these categories will not be reduced to reflect the removal of these products from the restraint coverage". The TMB observed, *inter alia*, that the decision of Canada not to adjust downwards the respective restraint levels could bring about a real increase in access opportunities, 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.[165]

427. The European Community will not integrate parts of restrictions and, therefore, the provisions of Articles 4.3 and 4.4 will not apply in this regard.

[165] See paragraph 103.

428. The United States' Sage 3 integration programme includes a number of products which form part of broader restrictions (categories to be partially integrated; categories to be integrated from merged categories; products to be integrated falling under group or aggregate limits). As indicated in Chapter II, regarding 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 United States stated that it "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 the TMB already 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.

429. The TMB reiterates its statement in paragraph 428 and expects 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.

Attachment 1

Changes in US Rules of Origin for Textile and Clothing Products
(as communicated by ITCB members in response to additional clarifications sought by the TMB)

The US changed its rules of origin with respect to textile and clothing products as part of its Uruguay Round Agreements Act. These changes became effective from July 1996 and introduced substantial alterations in the pre-ATC rules.

The EU challenged these changes. Following a bilateral deal between the two, the US rectified the situation mainly with respect to products of export interest to the EU through Section 405 of its Trade and Development Act 2000 enacted on 18 May 2000. Thus

(a) For processed fabrics, the origin reverted to the pre-1996 rule. Consequently, such fabrics are conferred origin of the country where they are both dyed and printed and undergo two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing or moireing.

However the same rule does not apply to fabrics made of wool. In other words, for fabrics of wool, origin remains where the basic fabric is formed.

(b) For made-up articles, for 16 specified categories of made-up articles, the 1996 change established the origin as the country where the constituent greige fabric was formed by weaving or knitting, regardless of any further processing such as dyeing and printing of fabric, and subsequent conversion of fabric to made-up articles.

With respect to some of these 16 articles, the origin rule has been changed by the Trade and Development Act 2000. The products concerned are listed in an Appendix to this note. The new changes are summarized below:

(i) For non-cotton and non-wool made-up articles (i.e., only for those of silk, MMF or other vegetable fibres), the rule now recognizes dyeing and printing as origin conferring. Accordingly the origin is the country where the constituent fabric is dyed and printed and undergoes two or more finishing operations (regardless however of where it may be further processed).

But, if these same products are made from cotton or wool fabric, the origin continues to be deemed the country where the basic cotton or wool fabric is formed.

(ii) What is more, the definition of cotton made-ups has been enlarged. Now an article containing 16 per cent or more by weight of cotton is considered as that of cotton.

(iii) And for all made-up articles, contrary to pre-ATC rules, the new rule continues to disregard processing operations such as designing, cutting, hemming, sewing, etc., that may be undertaken on the fabric to convert it to made-up articles.

(c) For apparel products, no further modification has been effected. Consequently, origin continues to be determined on the basis of rules as modified and implemented with effect from July 1996.

Attachment 2

Changes in US Rules of Origin for Textile and Clothing Products+
(as summarized by ITCB members in response to additional clarifications sought by the TMB)

US Rules of Origin
Treatment of 16 Specified Categories of Made-up Articles

Products for which rules were changed in 1996			Whether affected under the Year 2000 changes
	HTS No.	Brief Description	
1.	5609	Twine, cordage, ropes	No change
2.	5807	Labels, badges, not embroidered	No change
3.	5811	Quilted products	No change
4.	6209.20.5040	Diapers of cotton	No change
5.	6213	Handkerchiefs	Changed
6.	6214	Shawls, scarves, mufflers	Changed
7.	6301	Blankets, travelling rugs	No change
8.	6302	Bed, table, toilet, kitchen linen	Changed with respect to HTS 6302.22, 29, 52, 53, 59, 92, 93, 99
9.	6303	Curtains, bed valances	Changed with respect to 6303.92, 99
10.	6304	Other furnishing articles	Changed with respect to 6304.19, 93, 99
11.	6305	Sacks and bags	No change
12.	6306	Tarpaulins, tents, camping goods	No change
13.	6307.10	Floor and dish cloth, dusters, etc.	No change
14.	6307.90	Other made up articles	No change
15.	6308	Sets consisting of fabric and yarn for making into rugs, tapestries, etc.	No change
16.	9404.90	Quilts, cushions, comforters	Changed with respect to 940490.85, 95
---	6117.10*	Shawls, scarves, mufflers, knit	Changed

*This HTS number has been included only in the 2000 legislation.

Note: These 16 product categories are those for which the 1996 rule established origin as the country in which the constituent fabric is made in its basic greige form.

+In the response of ITCB members, this Attachment was an appendix to Attachment 1.

Attachment 3

US Changes in Classification of Products/Categories, and Technical Requirements
Effected During the ATC Transitional Period
(as communicated by ITCB members in response to additional clarifications sought by the TMB)

During the year 1995:

1. US Customs modified its previous rulings to request the country of origin to be noted as the country where the fabric was woven for flat sheets. The product used fabric woven in country A, cut and hemmed, with piping or capping added in country B and shipped to the US. Previously, the origin was conferred to where the fabric was altered.

2. US Customs detained importer's goods (women's cotton boxer-style briefs) and determined it as women's woven cotton shorts in HTSUS 6204624055 and quota category 348 instead of HTSUS 61082100 and quota category 352 as declared by the importer in early 1995. Court of International Trade (CIT) upheld the declaration by the importer because of the physical characteristics of the product and the evidence educed at trial that they are designed and marketed as underwear.

3. 1995 Correlation amended to include 5 changes relating to textiles and clothing.

4. US Customs classified colour ink sheet rolls used in colour thermal transfer printers as typewriter and similar ribbons in HTSUS 96121090. Importer declared it as parts of printers in HTSUS 84733040. CIT agreed with the importer that the products are not typewriter ribbons.

During the year 1996:

1. Committee for the Implementation of Textile Agreements (CITA) issued a notice reminding interested parties that shipments made in one year exceeding the quota level for that year are in violation of the terms of the agreements. It has been the practice of CITA to charge the excess to the quota for the immediate following quota period. CITA now says it reserves the right to deny entry permanently to these excess shipments.

2. CITA changed certain HTSUS classification numbers of all import controls for goods entered in categories 647W and 669P.

3. The US Customs changed its 1996 harmonized tariff schedule, affecting products under HS No. 6117, 6217 and 6307.

4. The Consumer Product Safety Commission is seeking to reinstate information collection requirements for regulations implementing flammability standards for rugs and carpets.

5. 1996 Correlation contained changes affecting categories 229, 611, 618 and 629.

6. The Consumer Product Safety Commission modified the flammability standards for children's sleepwear in September.

During the year 1997:

1. US Customs implemented minimum bond requirement, for all companies importing textiles, of 2 per cent of the value of their world-wide imports of textiles.

2. 1997 correlation was modified affecting category 301. CITA amended the correlation effective 23 June 1997. The products affected are classified under HS No. 5205.

During the year 1998:

1. CITA announced revision to the 1998 correlation for textile-covered cooler bags affecting categories 369, 670, 859 and 870.

2. Some HTSUS classification numbers were changed for products in part-categories 369L and 670L.

3. CITA made change to 1998 Correlation affecting categories 222 and 362.

VII. IMPLEMENTATION OF THE PROVISIONS RELATED TO PROBLEMS ARISING FROM POTENTIAL CIRCUMVENTION OF THE ATC (ARTICLE 5)

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

A. STAGE 1: ISSUES RELEVANT IN THE CONTEXT OF THE IMPLEMENTATION OF ARTICLE 5

431. As noted in Chapter IV of this report and also in the TMB's first comprehensive report[166], the administrative arrangements concluded, respectively by the European Community and the United States with a great number of Members included provisions related to circumvention. In light of the explanations received, the TMB noted that the European Community and the Members concerned had deemed it necessary to include provisions of the previous bilateral agreements in the administrative arrangements, including provisions on circumvention, which could have a potential effect on the implementation and administration of quantitative restrictions notified by the European Community pursuant to Article 2.1. As an overall conclusion of its review of the administrative arrangements notified by the European Community, the TMB expected that these arrangements, including the provisions on circumvention, would be implemented by the respective Members in conformity with the relevant provisions of the ATC.

432. 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

[166] See G/L/179, paragraphs 267 to 269.

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.

433. 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.

434. During Stage 1, only one specific matter was referred to the TMB with reference to, *inter alia*, Article 5. In November 1995, the TMB received a notification from Pakistan, pursuant to Articles 5.4 and 8.5, which referred to debits made by the United States to Pakistan's quotas for US category 361 products (bedsheets) on account of alleged circumvention by Pakistani companies. The TMB began its consideration of this notification at its meetings in February and March 1996 with the participation of delegations from both Members. At its March 1996 meeting, the TMB was informed by the two delegations that, following consultations, a mutually satisfactory understanding had been reached between them, and that this understanding would be notified to the TMB. Subsequently, the TMB received a notification from the United States, in October 1996, pursuant to Article 5, informing the TMB of the main features of "a mutually satisfactory solution [reached with Pakistan on 22 March 1996] with respect to the transshipment charges for [US] category 361 (cotton [bed]sheets) made by the United States [to Pakistan's quota for these products] on 11 August 1995", on account of alleged circumvention by Pakistani companies. According to this communication, the two "governments also reached a mutually satisfactory solution with respect to cotton bedsheets entering the United States incorrectly marked as man-made fibre". Furthermore, "in the context of this agreement, a mutually acceptable solution to the rules of origin changes [implemented by the United States] with respect to products in [some] categories had [also] been reached". However, before the TMB could start its consideration of this communication, Pakistan requested that this consideration be deferred, as there was a possibility that the two Members would submit a joint notification to the TMB. The United States consented to this request. In response to subsequent inquiries by the TMB for this joint communication, the request for deferral was successively repeated. In July 1997, a communication was received from Pakistan on the same matter, pursuant to Article 2.17 of the ATC. The Memorandum of Understanding (MOU) reached on 22 March 1996 between Pakistan and the United States was attached to this communication. Pakistan also stated in

the communication that the operative paragraphs of the MOU were subject to the provisions of its preamble[167] and were without prejudice to the rights and obligations of Pakistan under the ATC.

B. DEVELOPMENTS SINCE THE ADOPTION OF THE TMB'S FIRST COMPREHENSIVE REPORT

1. The TMB's Examination of the Communications Made by Pakistan and the United States

435. The TMB started its consideration of both communications referred to in paragraph 434 above, i.e. that by Pakistan submitted under Article 2.17 and that the United States notified under Article 5, at its meeting in September 1997. Since the two communications regarding the same mutually satisfactory solution had been made pursuant to two different articles of the ATC, the TMB decided to seek clarification from the two Members concerned and to revert to its review, also on the basis of the answers provided, at a subsequent meeting. In particular, the TMB sought clarification from Pakistan as to the reasons why the notification of the MOU had been submitted pursuant to Article 2.17, and from the United States why the notification of the mutually satisfactory solution had been submitted pursuant to Article 5.

436. In spite of reminders, no reply was received from either Member. Furthermore, there were no indications that any reply would be forthcoming. Therefore, at its meeting of January 1998, the TMB came to the view that, in such circumstances, it had to proceed with the examination of the substantive elements of the two communications, keeping also in mind the respective provisions under which they had been submitted. This decision was taken without prejudice as to whether the TMB would be in a position to reach a definitive conclusion on the justification of the measures in accordance with the provisions of the ATC, based on the information made available to it and bearing in mind, in particular, the fact that the communications by Pakistan and the United States had been made pursuant to two different provisions of the ATC. The TMB expressed its most serious concern about the lack of cooperation by the two Members to provide the Body with replies to the questions that had officially been put to them. The TMB recalled that, according to Article 8.3, the Body "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 … it may decide to seek from them". In the view of the TMB, by not providing additional information or necessary details in response to the clarifications sought by the TMB, Pakistan and the United States had failed to comply with an important obligation under the ATC. These circumstances could have a serious impact on the TMB's ability to discharge its functions as required under the Agreement. Furthermore, the unduly long delay in submitting the respective notifications prevented the TMB from conducting a prompt examination of the matter.

437. The TMB resumed the review of the two communications at its meeting in March 1998. The discussion continued during its meetings in May and June 1998 and was concluded at the 46th meeting, in July 1998.

438. The TMB noted that, though the respective notifications had been submitted to it in different forms and invoking different provisions of the ATC, both communications confirmed that the solution notified had been mutually agreed between Pakistan and the United States, and were an indication that both Members considered that the measures notified had been taken under the ATC. The TMB recalled that according to Article 8.1 of the ATC, the TMB's task was, *inter alia*, "to examine all measures taken under this Agreement and their conformity therewith". However, the TMB found it unusual that the same mutually agreed solution had been referred to it by the Members concerned under two different provisions of the ATC, which notwithstanding the requirements defined in Article 8.1 and cited above, conferred different tasks on the TMB in reviewing the measures brought before it. The review provision of Article 2, namely Article 2.21, provides that "[t]he TMB shall keep

[167] The preamble of the MOU stated that the agreement between the two governments was "without prejudice to their rights and obligations under the Uruguay Round Agreement on Textiles and Clothing".

under review the implementation of this Article. It shall, at the request of any Member, review any particular matter with reference to the implementation of the provisions of this Article. It shall make appropriate recommendations or findings within 30 days to the Member or Members concerned, after inviting the participation of such Members". Recalling that the notification of Pakistan had been submitted in July 1997, pursuant to Article 2.17, the TMB observed that no request, in the sense of the second sentence of Article 2.21, had been addressed to it by Pakistan. Therefore, a review of this notification under Article 2.21 should be confined to the provisions of the first sentence of this Article. Under Article 5, the only provision which specifically required the notification of a mutually satisfactory solution to the TMB and, subsequently, a review by the TMB, as a result of which the Body "may make such recommendations to the Members concerned as it deems appropriate", was contained in Article 5.4. It was recalled that the notification submitted by the United States was made pursuant to Article 5, with no further specification of a paragraph under this Article.

439. The TMB also observed that, in addition to the above, neither of the two communications provided sufficient explanation for the different elements forming part of the mutually satisfactory solution reached between the two Members. The same applied to the possible link among the different elements so agreed. The MOU did not contain any such explanation or justification, and the accompanying notification submitted by Pakistan also remained silent in this regard. The notification by the United States provided some reasoning for one of the particular elements agreed, but not for the others, and in the absence of any indication or explanation from Pakistan the particular reasoning given by the United States had to be seen as the views of one of the parties. In any event, the amount and quality of the information provided by the two Members put limitations on the TMB's ability to review these communications as required under the ATC.

440. The TMB understood that the mutually satisfactory solution agreed between Pakistan and the United States contained three main elements, which it considered in sequence:

- a reduction of the debit made by the United States to Pakistan’s category 361 quota for 1995 to the extent of and in respect to cotton fitted sheets (subsequently, after discussions with Pakistan, the United States had decided to make the reductions in charges to the category 361 quota for 1996);

- the introduction of restrictions on man-made fibre bedsheets and pillowcases (US categories 666-S and -P); the increase in the base limits for categories 360 and 361; and

- the resolution of matters concerning US rules of origin changes with respect to imports of bedsheets and pillowcases from Pakistan into the United States.

(a) Reduction of the debit made by the United States to Pakistan's category 361 quota

441. With respect to the first main element, the TMB took note of the adjustment to the quota level for category 361 resulting from a reduction of the charges made by the United States, a reduction which had been applied to the 1996 limit. The TMB also took note that, accordingly, Pakistan had decided to withdraw its requests of 30 November 1995 and 4 March 1996 that the TMB review the US charges to category 361. In doing so, the TMB expressed concern that, in 1995, when it had made the debits to Pakistan's quota, the United States had not notified it to the TMB with full justification, as required in Article 5.4. The TMB also reiterated its concern that the mutually satisfactory solution which had been reached between Pakistan and the United States, had not been notified to the TMB for over six months. Moreover, the TMB observed that the respective communications submitted by Pakistan and the United States had not provided explicit reasoning or justification for the adjustment agreed between the parties. It should also be noted that prior to reaching these conclusions, the TMB considered a number or elements involved in this aspect of the case. The Body stated, *inter alia*, that the ATC did not provide for cases whereby measures were decided after the entering into force of the

ATC with reference to actions that had taken place under the previous MFA regime. It also observed that there could be explanations for notifying this element of the MOU either under Article 2.17 or under Article 5.4.

(b) Introduction of a limit on man-made fibre bedsheets and pillowcases

442. With respect to the second main element (and in particular the introduction of restrictions on man-made fibre bedsheets and pillowcases (US categories 666 -S and P), in the absence of additional information from the Members concerned, the TMB considered the introduction of these new restrictions pursuant to those ATC provisions (i.e. Articles 2.17 and 5) under which the respective notifications had been referred to the Body. Having examined the introduction of these restrictions in the context of Article 2.17, the TMB concluded that there appeared to be no justification to apply new quantitative restrictions under that Article.

443. Turning to the consideration of the same restrictions in the context of Article 5 of the ATC, the TMB recalled, *inter alia*, that the communication had been submitted by the United States pursuant to Article 5, without mentioning any particular provision of that Article, and that under that Article the only provision that specifically required the notification of a mutually satisfactory solution agreed between Members was contained in Article 5.4. The TMB, therefore, examined the issue of the introduction of the new restrictions in the context of that provision. The TMB observed, *inter alia*, that, apart from the third sentence of Article 5.4, the introduction of a new restriction, even if mutually agreed between the Members concerned, was not mentioned in Article 5.4 as an "appropriate action, to the extent necessary to address the problem" when circumvention, as defined in Article 5.1, had occurred. Furthermore, the TMB understood that the introduction of restrictions, set out in the third sentence of Article 5.4, related only to cases where there had been evidence of the involvement of the territories of third-party Members in the transshipment. This provision, therefore, could not *per se* allow the introduction of new restrictions on imports from Pakistan in the particular case when circumvention had occurred.

444. The TMB also observed that while the second and third sentences of Article 5.4 specified possible actions that could be taken when circumvention had occurred, they did not provide an exhaustive list for such actions. This was made clear by the language of the second sentence as well as by the fifth sentence of Article 5.4, the latter providing that "[t]he Members concerned may agree on other remedies in consultation".

445. As for the fifth sentence of Article 5.4, the TMB observed that the Agreement did not specify what, in the context of this paragraph, could or could not constitute the "other remedies". It could be argued that the "other remedies" referred to in Article 5.4 did not include the permission to introduce new quantitative restrictions, since Article 5.4 in itself, as well as the broader context as determined by the ATC, provided sufficient guidance to the Members concerned to develop a correct understanding on what could or could not constitute such "other remedies" in the sense of Article 5.4. It could be contended that Article 5.4 was sufficiently specific in defining what type of actions could be taken in response to well defined circumstances. The formulation of the second sentence of Article 5.4 seemed to imply that the action taken should affect the product that was subject to circumvention. Since only the exports of products that had already been subject to restrictions could be circumvented, the remedy for such circumvention could not affect products other than those with respect to which circumvention had been claimed. Reading this second sentence in conjunction with the fifth sentence, it appeared, therefore, that the two Members could have agreed on adjustments of charges to the restraint level established for the category 361 products or on "other remedies" affecting the same products, but not on "other remedies" affecting other products, like category 666 -S and 666-P products. In addition, the third sentence of Article 5.4 explicitly allowed the introduction of new restrictions, but did so only in cases where there was evidence of the involvement of the territories of (third-party) Members through which the goods had been transhipped. If this provision were read together with the fifth sentence of Article 5.4, it would appear that remedies other than the

introduction of restrictions on imports of category 361 products could also have been foreseen, but these actions had to be limited to the products transshipped and to the Member through which the transshipment was effected. This sentence did not provide authorization for the introduction of new restrictions on imports from Pakistan.

446. It could also be contended that the broader context as defined by the ATC (i.e. since the Agreement sets out provisions to be applied by Members during a transition period for the integration of the textiles and clothing sector into GATT 1994 and, thus, the ultimate objective of the Agreement is to ensure the full integration of trade in the covered products into the GATT 1994 rules and disciplines, the ATC carefully circumscribes the possibilities for maintaining or introducing quantitative restrictions) also confirmed the two statements above.

447. It could also appear, however, that the language of the fifth sentence of Article 5.4 was vague and permissive, not setting any limitation on the kind of actions that would constitute possible "other remedies". It could, therefore, be argued that this formulation provided broad discretion to the Members concerned in reaching an agreement, in consultation, on what they consider in a particular case to be appropriate remedies (other than those defined in the preceding sentences of the same Article). On the basis of such a reasoning, one could not exclude an argument that the introduction of restrictions on products previously not subject to such restrictions could be considered as a possibility for providing "other remedies".

448. Due to the fact that Article 5.4 had not been specifically invoked by either of the Members, and full justification for the action had not been provided, the TMB refrained at that stage from taking a definitive view on the applicability of this provision, as well as on the conformity of the actions taken with Article 5.4. The TMB noted that Article 5.4 envisaged that where there was sufficient evidence that circumvention had occurred the action taken should be "appropriate" and "to the extent necessary to address the problem". Even if the arguments, that Article 5.4 provides broad discretion to the Members concerned to reach an agreement through consultations as to what they consider in a particular case to be appropriate remedies, were to be retained, it would also be necessary to assess whether the action was appropriate and whether it addressed the problem identified "to the extent necessary".

449. The TMB observed that if one followed the reasoning that the introduction of new restrictions could be considered as a possibility for providing "other remedies" in the sense of Article 5.4, the action would be seen as being appropriate. Therefore, it could be viewed as being justified, provided that it corresponded to what was perceived as the necessary extent to address the problem. Since, according to the explanation given by the United States, the problem had been related to the implementation of restrictions notified pursuant to Article 2.1 (by mis-marking goods that were subject to such restrictions), one could argue that the mutually acceptable solution reached between the two Members did not go beyond what was necessary, for the following reasons:

- although it provided a disincentive for mis-marking the products in question by putting restrictions on the products that had been subject to such practices;

- it, at the same time, allowed trade to proceed.

450. There could, however, be arguments against reaching such a conclusion. First, if the reasoning prevailed that the introduction of the new restrictions, even if mutually agreed between the two Members, could not be justified under Article 5.4, the action taken could not be viewed, by definition, as being appropriate. Second, notwithstanding the arguments that the introduction of new restrictions could be considered as a possibility for providing "other remedies" in the sense of Article 5.4, it could be argued that the introduction of the new restrictions did not meet the requirement that the actions taken should be "to the extent necessary to address the problem". If the problem stemmed from the mis-marking of the man-made fibre products, introducing restrictions on them did not seem

to address the problem at all, or to the extent necessary, as it allowed for the continuation of mis-marking up to a certain limit which amounted to the level of the new restrictions. Taking an action "to the extent necessary to address the problem" involved another aspect too, which was related to the duration of the measure in question. On the basis of the respective communications, the TMB understood that the new restrictions would remain in place until the expiration of the ATC, i.e. for almost nine years. This was a much longer duration than the one envisaged in Article 6, which explicitly authorized the introduction of new restrictions provided the necessary conditions were met. The maximum time-frame envisaged in Article 6 was three years, this being a ceiling, not a duration that had to be automatically agreed or imposed. Since the proposed duration of the particular action at issue went very much beyond that three-year ceiling, the reasons why this had been deemed necessary by the two Members should have been at least explained to the TMB convincingly. The TMB noted in this regard that no such explanation had been provided to it by either of the Members. On the basis of these arguments, one could conclude that the introduction of the new restrictions was not appropriate, nor did it address the problem to the extent necessary.

451. Since the communication of the United States had been submitted pursuant to Article 5, without specifying the particular provision under this Article that had been considered to be applicable to the particular case, the TMB also examined the introduction of the new restrictions in the context of Article 5.6, in order to address all possible options. The TMB observed that the United States had stated that the overwhelming majority of textile shipments (i.e. cotton bedsheets) from Pakistan to the United States had been incorrectly marked as man-made fibre. The TMB further observed that this statement by the United States had not been formally contested, nor confirmed, by Pakistan.

452. The TMB was of the view that it was arguable whether or not such incorrect marking corresponded to a false declaration concerning fibre content, quantities, description or classification of merchandise, as set out in Article 5.6. It could be argued that Article 5.6 did not allow for taking such measures as the introduction of new quantitative restrictions. The second sentence of Article 5.6 envisaged that appropriate measures, consistent with domestic laws and procedures, should be taken against the exporters or importers involved. Therefore, it appeared that a mutually satisfactory solution reached pursuant to this provision would encompass appropriate measures against the firms involved (exporters and/or importers), as opposed to those against governments. In addition, while Article 5.6 was not precise in providing Members with modalities for taking "appropriate measures" in cases where false declarations had been made for purposes of circumvention, it could be contended that the loose disciplines attached to this provision (e.g. there was no requirement to notify the appropriate measures agreed to the TMB), compared to other provisions concerning the taking of measures having a restrictive effect embodied in the ATC, raised doubts as to whether the introduction of new restrictions could be contemplated under this particular provision. Based on these considerations, as well as on the analysis regarding the broader context defined by the ATC, as reflected above, it could be argued that the introduction of the new restraints, even if mutually agreed between the two Members, could not be justified in the context of Article 5.6

453. It could also be argued, that if one were to accept that (i) incorrect marking of cotton bedsheets had been, at least in part, the root of the problem identified and that (ii) this practice amounted to a false declaration as defined in Article 5.6, the language of this Article would authorize the Members concerned to agree, in cases where no, or inadequate, administrative measures were being applied to address and/or to take action against such circumvention, on any kind of mutually satisfactory solution, possibly including the introduction of new restraints. Such a conclusion would rely, *inter alia*, on the lack in this language of any explicit indication regarding the possible nature of the measures that could be agreed between the Members as a mutually satisfactory solution. The TMB declined to take a definitive position at that stage on the applicability of this provision, as well as on the conformity of the actions taken with Article 5.6.

454. Having summarized its detailed considerations of the matter the TMB wished, in terms of findings, to draw the attention, in particular, to the following points:

- the actions referred to above had been agreed apparently in response to developments that had taken place prior to the entering into force of the ATC;

- any mutually satisfactory solution between Members under the ATC shall be consistent with the relevant provisions of the ATC, shall not nullify or impair benefits accruing to any Member under the Agreement, nor impede the attainment of any of its objectives;

- there appeared to be no justification for the introduction of new restrictions pursuant to Article 2.17, which was the only provision of the ATC invoked by Pakistan;

- it appeared to be more relevant to consider these measures in the context of Article 5, which was the provision referred to by the United States. The United States, however, had not provided further precision regarding the applicable paragraph under Article 5;

- in the absence of appropriate explanation and justification provided to it, the TMB carefully considered all possible options, arguments and counter-arguments in the context of Article 5. Though for the reasons explained above, the TMB had not been placed in a position to take a definitive stand, at that stage, on the conformity, or lack thereof, of the measures discussed with the ATC, the Body was of the view that its detailed considerations, especially those regarding the examination of the introduction of the new restrictions in the context of Article 5 and, in particular, Article 5.4, would not only require, but also facilitate further reflection by Pakistan and the United States.

455. Consequently, the TMB recommended that Pakistan and the United States re-examine the measures in question, in the light of the Body's comments and considerations. 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.

(c) Resolution of matters concerning changes in the US rules of origin

456. With respect to the third main element (i.e. the resolution of matters concerning changes in the US rules of origin), the TMB recalled that, according to both notifications, the mutually acceptable solution also resolved matters concerning changes to US rules of origin with respect to imports of bedsheets and pillowcases (products of categories 360, 361, 666 - S and 666 - P) from Pakistan into the United States. The TMB recalled that neither Pakistan nor the United States had previously referred to the TMB any matter regarding the changes in US rules of origin affecting the products mentioned above. Furthermore, the communications by Pakistan and the United States had been submitted, respectively, pursuant to Articles 2.17 and 5, whereas the relevant provisions of the ATC addressing issues related, *inter alia*, to changes in practices, rules, procedures and categorization of textile and clothing products, were contained in Article 4. In taking note of this element of the communications, the TMB observed that Article 4.4 explicitly required the TMB to review such issues in cases where a mutually satisfactory solution was not reached between the Members concerned and when any of those Members decided to refer the matter to the TMB for recommendations as provided for in Article 8.

2. Communication by Pakistan and its Follow-up

457. Despite repeated informal reminders, no communication was submitted by either of the two parties on the implementation of the TMB's recommendation, reflected in paragraph 455, until April 2000 when Pakistan submitted a communication to the TMB pursuant Article 8. In this communication Pakistan reported that "following careful and detailed re-examination of the matter relating to the 'introduction of a limit on man-made fibre bedsheets and pillowcases (category 666-S and -P)' in light of the Body's comments and considerations, [the] Government of Pakistan agrees that the subject restrictions did not conform to the provisions of the ATC. Consequently it requested consultations with the Government of the United States. Regrettably, during consultations held between [the] two governments, it had not been possible to arrive at a mutually agreed solution conforming to the provisions of the ATC." In view of that, Pakistan requested the TMB to "consider the matter pursuant to Article 8 (in particular to paragraph 5 thereof) and recommend that the United States withdraw the limits on Pakistan's exports of category 666-S and -P". At the very beginning of the consideration of this matter by the TMB, during its meeting of May 2000, the representative of the United States requested that the consideration by the TMB be suspended to allow for further consultations between the two Members. Pakistan agreed to this request and the TMB, therefore, suspended its consideration. Subsequently, the representatives of both Pakistan and the United States informed the Body that the renewed consultations had been productive and requested the TMB to postpone its further consideration of this matter, since they expected that this would allow them to finalize a mutually agreed solution. They also indicated that they would report back to the TMB in due course on the outcome of their consultations. The TMB agreed to this request.

458. At its June 2000 meeting, the TMB took note of a communication by Pakistan in which it informed the Body that it had held bilateral consultations with the United States and stated that until such time as the results of these resumed bilateral consultations were notified to the TMB, "the review of the matter may be postponed". The TMB agreed, as suggested by Pakistan, to postpone its review of the matter until such time as the notification referred to in the communication of Pakistan was received.

3. Joint Communication Received from Pakistan and the United States

459. In September 2000, the TMB received a joint communication from Pakistan and the United States, in which the two Members "refer to the request made by the TMB to our two governments contained in G/TMB/R/45 that we re-examine issues related to the Memorandum of Understanding signed by representatives of our two governments on March 22, 1996". According to the communication, a new Memorandum of Understanding signed on 25 May 2000, attached to the communication, "reflects the results of this re-examination and constitutes a mutually satisfactory solution of the issues related to Articles 4 and 5 of the ATC contained in the MOU dated March 22, 1996".

460. The TMB considered this joint communication during its meeting in October 2000. It recalled that two previous communications related to the present one had been referred to the Body at its meetings in May and June 2000. These communications had been made by Pakistan following the review by the Body, in 1998, of the mutually satisfactory solution reached by Pakistan and the United States on 22 March 1996. The TMB observed that the new Memorandum of Understanding presented the recently held consultations as a continuation of the consultations begun in March 1996 between Pakistan and the United States with regard to deductions made on 11 August 1995 by the United States to Pakistan's category 361 quota under Article 5. The recent consultations, according to the MOU, "also included related issues concerning bedsheet and pillowcases categories in both cotton and man-made fibre raised under Articles 4 and 5 of the ATC". Furthermore, the MOU also stated that "Pakistan […] withdraws its request dated 5 April 2000 for Textiles Monitoring Body review pursuant to ATC Article 8, paragraph 5, of the limits on [imports of] 666-P and 666-S [products]". The TMB observed that the new MOU amended the MOU of 22 March 1996, in so far as it increased

the base limits for categories 666-P and 666-S for the year 2000, provided for increased growth rates for the period 2001 to 2004 and provided additional flexibility for those categories.

461. In taking note of the withdrawal by Pakistan of its request for the TMB's review, pursuant Article 8.5, of the limits on imports of 666-P and 666-S products as stated in the MOU attached to the communication, the TMB observed that this communication, while reporting to constitute a mutually satisfactory solution between the two Members, did not contain explanation or justification for the introduction of a restriction on imports of products of category 666-S and 666-P and did not specify the particular provision of the ATC which would justify, in the view of the parties, the application of such a measure. The TMB recalled that, already in 1998, these had been the same reasons why it had not been in a position to take a definitive stand on the conformity, or lack thereof, of this measure with the ATC. Consequently, the TMB had recommended that the parties re-examine the measure in question, in light of the Body's detailed comments and considerations. In the continued absence of appropriate explanation and justification from the two Members, the TMB reiterated that unless additional information in this regard was provided, the Body would not be in a position to determine, as required, the conformity, or lack thereof, of this measure with the ATC. It was expected that this additional information would be received in the near future.

462. At its December 2000 meeting, the TMB reverted to the joint communication received from Pakistan and the United States. The Body observed that though it had expected to receive additional information from the parties, as regards explanation and justification for the introduction of new restrictions on imports from Pakistan of products of category 666-S and 666-P, no such additional information had been received up to that time and that there was no indication as to whether such additional information would be provided in the near future. The TMB decided, therefore, to put more specific questions to both parties with respect to the joint communication received and to the new Memorandum of Understanding (MOU), signed on 25 May 2000, so as to be in a position to determine, as required, the conformity or lack thereof, of the said measures with the ATC. These questions were as follows:

> "The TMB noted that the joint communication had been made with reference to a mutually satisfactory solution of the issues related to Articles 4 and 5 of the ATC contained in the MOU dated 22 March 1996. This seemed to indicate that both Members considered that the mutually satisfactory solution contained in the MOU dated 25 May 2000 and, by implication, also in that of the MOU of 22 March 1996, had been reached under the ATC. The TMB expected that both Members would provide confirmation in this regard.
>
> The TMB observed that the joint communication referred to the request made by the TMB, contained in paragraph 51 of G/TMB/R/45, 'that Pakistan and the United States re-examine the measures in question [i.e. the new restrictions introduced in 1996 on imports from Pakistan of products of categories 666 - P and 666 - S for a duration of almost nine years], in the light of the Body's comments and considerations. 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 pronounce itself definitively on the justification and conformity of the actions with the relevant provisions of the ATC'. The joint communication stated that '[t]he attached Memorandum of Understanding reflects the results of this re-examination and constitutes a mutually satisfactory solution of the issues related to Articles 4 and 5 of the ATC contained in the MOU dated 22 March 1996'. The TMB noted that while its request for re-examination had been related to the possible justification, or lack thereof, of the introduction of new restrictions under the provisions of the ATC invoked by the parties at that time (Article 2.17 by Pakistan and Article 5 by the United States, respectively), the joint communication and the attached MOU did not seem to provide a direct reply to this core question. Therefore, it was not clear, for the TMB, in what sense and to what extent the mutually satisfactory solution reached in May 2000 was the result of the re-examination of

the measures in question in the light of the Body's comments and considerations as contained in G/TMB/R/45, in particular paragraphs 29 to 42. The TMB expected clarification from the parties in this regard.

The TMB further observed that the MOU, dated 25 May 2000, stated that representatives of Pakistan and the United States had met on 24-25 May 2000 'to continue consultations begun on 20-22 March 1996 with regard to deductions made on 11 August 1995 to Pakistan's category 361 quota under Article 5 of the Agreement on Textiles and Clothing (ATC). Such consultations also included related issues concerning bedsheet and pillowcase categories in both cotton and man-made fibres raised under Articles 4 and 5 of the ATC. Having obtained a mutually satisfactory solution resolving these issues', the parties agreed to certain remedies in the form of amendments to the remedies obtained under the MOU dated 22 March 1996. These remedies essentially consisted of increases in the levels of the restrictions applied for the years 2000 to 2004 to imports of products of categories 666-P and 666-S, as well as provision for certain special flexibility regarding the application of these restrictions. The question arose as to the exact relationship between these new remedies and (i) the deductions made on 11 August 1995 to Pakistan's category 361 quota under Article 5 of the ATC and, in particular, (ii) the related issues concerning bedsheet and pillowcases categories in both cotton and man-made fibres raised under Articles 4 and 5 of the ATC. With respect to the latter, an explanation of what were 'the related issues concerning bedsheet and pillowcase categories in both cotton and man-made fibres under Articles 4 and 5 of the ATC' would also be helpful for the TMB in order to have a better understanding regarding the facts involved in this case. The TMB, therefore, requested further elaboration from the parties on these questions.

Turning to the key issue of conformity, or lack thereof, of the new restrictions with the provisions of the ATC, the TMB recalled that during its seventieth meeting it had made the following observations: the joint communication 'while reporting to constitute a mutually satisfactory solution between the two Members, did not contain explanation or justification for the introduction of a restriction on imports of products of category 666-S and 666-P and did not specify the particular provision of the ATC which would justify, in the view of the parties, the application of such a measure. The TMB recalled that, already in 1998, these had been the same reasons why it had not been in a position to take a definitive stand on the conformity, or lack thereof, of this measure with the ATC. Consequently, the TMB had recommended that the parties re-examine the measure in question, in light of the Body's detailed comments and considerations. In the continued absence of appropriate explanation and justification from the two Members, the TMB reiterated that unless additional information in this regard was provided, the Body was not put in a position to determine, as required, the conformity, or lack thereof, of this measure with the ATC.'

With a view to providing more precision in this regard, the TMB observed that whilst the respective communications of the mutually satisfactory solution reached between Pakistan and the United States on 22 March 1996 had been made under Article 2.17 by Pakistan and under Article 5 by the United States, the recent joint communication referred to 'a mutually satisfactory solution of the issues related to Articles 4 and 5 of the ATC contained in the MOU dated 22 March 1996', making no reference to Article 2.17. It seemed, therefore, that the reference to Article 2.17 was no longer applicable, at least in so far as the mutually satisfactory solution reached on 25 May 2000 was concerned. The TMB sought confirmation by the parties in this regard.

Furthermore, the TMB recalled that in reviewing the communications received from both Pakistan and the United States related to the MOU of 1996, and in particular the introduction of a limit on imports from Pakistan of man-made fibre bedsheets and pillowcases (categories 666-S and 666-P), the Body had found, *inter alia*, that:

- 'there appeared to be no justification for the introduction of new restrictions pursuant to Article 2.17, which was the only provision of the ATC invoked by Pakistan;

- it appeared to be more relevant to consider these measures in the context of Article 5 of the ATC, which was the provision referred to by the United States. The United States, however, had not provided further precision regarding the applicable paragraph under Article 5;

- in the absence of appropriate explanation and justification provided to it, the TMB carefully considered all possible options, arguments and counter-arguments in the context of Article 5. Though for the reasons explained [in its detailed report], the TMB had not been placed in a position to take a definitive stand at this stage on the conformity, or lack thereof, of the measures discussed with the ATC, the Body was of the view that its detailed considerations, especially as reproduced in paragraphs 29 to 42 [of G/TMB/R/45] would not only require, but also facilitate further reflection by Pakistan and the United States.'

The TMB noted in this respect that the only provisions of the ATC referred to in the recent joint communication, and in the MOU attached to it, were Articles 4 and 5, and that the specific provisions of those Articles which the parties considered to be relevant in the context of the introduction of new restrictions had not been identified, nor had any explanation or reasoning on the purpose for the invocation of these provisions been provided. Recalling its examination and findings as reflected in G/TMB/R/45, the TMB reiterated that such information would be of crucial importance for its further examination of the joint communication and urged the parties to provide it to the TMB.

In particular, if the parties considered that new restrictions could be introduced in respect of the case at hand pursuant to Article 5, the TMB expected them to specify the particular paragraph of the said Article under which such measures had been agreed upon. In so doing, they should also reflect on the detailed arguments made by the TMB in paragraphs 29 to 50 of G/TMB/R/45 and make their respective views on them known to the TMB. Furthermore, as regards Article 4, the TMB noted that this Article had not been specifically referred to by either party prior to the recent joint notification, and that no information had been provided as to whether this reference had been made in the context of the resolution of the matters concerning the US rules of origin changes with respect to bedsheets and pillowcase imports from Pakistan into the United States, or whether it had been made in the context of the introduction of new restrictions on imports of man-made fibre bedsheets and pillowcases. With respect to the latter the TMB wished to recall that it had already reflected, though in a different context, upon the possibility of introducing a new restriction under Article 4 of the ATC and reached certain conclusions in this regard."

463. The TMB expressed its concern that it had not been in a position to determine, as required, 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 questions, as set out in paragraph 462, without delay.

464. In the context of the preparation of the 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. Despite these reminders, no further communications were provided by either of the two Members on this matter. Under these circumstances, the TMB reiterates its serious concerns as already reflected in some of the above paragraphs, in particular in paragraph 463.

4. Other Matters Referred to the TMB under Article 5

465. Apart from the issue detailed in paragraphs 434 to 464, no other specific matter has been referred to the TMB with reference to the provisions of Article 5.

C. CONCLUSIONS ADOPTED BY THE CTG IN FEBRUARY 1998 IN ITS FIRST MAJOR REVIEW

466. In the conclusions adopted by the CTG regarding the implementation of the ATC in the first stage of the integration process, the following was reflected.

> " 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.
>
> […]
>
> 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."[168]

D. VIEWS AND COMMENTS OF WTO MEMBERS IN RESPONSE TO THE TMB'S GENERAL REQUEST FOR INFORMATION AND/OR TO FURTHER QUERIES TO CERTAIN WTO MEMBERS

467. In reply to the TMB's request for notifications and information, the United States devoted particular attention to the issue of transshipment. According to this communication, during the second stage of the ATC integration schedule, the United States remained extremely concerned about the adequacy of international cooperation to prevent illegal textile transshipment. The United States asked a number of its trading partners to work with it to strengthen enforcement in this area so that the integrity of the ATC regime would be maintained throughout the course of the phase-out period. Furthermore, the communication stated that illegal transshipment did not serve the purposes of restrained exporting Members, nor would it be tolerated in the United States. The communication went on to state that the major cause of concern continued to be the movement of Chinese-made goods through third countries. Through sophisticated targeting techniques, the US Customs had been able to increase the efficiency of its team visits. As a result, in many countries and territories, problems had been uncovered in up to 50 per cent of the factories visited. These problems included goods continuing to be exported to the United States from closed factories, accompanied by documents indicating that the closed factory was in fact the manufacturer/producer. In addition, in many instances factories were unable to provide records that supported the production of the merchandise shipped to the United States or did not have the factory capacity to produce the goods shipped. Finally, actual transshipment had been uncovered and statements made by factory operators that corroborated this activity. There had also been an increase in the number of instances of attempts to introduce illegally transshipped textiles into the United States by smuggling. In some instances the wearing apparel was misdescribed in the hope that the actual goods would not be examined at the port of entry. In some cases, the cooperation and diligence of foreign counterparts uncovered this fraud.

[168] G/L/224, paragraphs 56 and 58.

468. In its submission, the United States also mentioned that the year 2000 had also seen greater interaction with Sub-Saharan African nations that will participate in the Trade and Development Act 2000. As part of this US legislative, package Sub-Saharan African nations would be able to receive duty-free and quota-free treatment for wearing apparel. The US Customs would continue to work with their African counterparts to ensure that the benefits afforded by this legislation accrue to the African countries and not to third countries attempting to introduce wearing apparel into the United States by illegal means.

469. A brief report on enforcement and cooperative efforts by the US Customs Service to detect and prevent illegal textile transshipment was attached to the submission, covering activities during the calendar year 1999.[169] According to this report, *inter alia*, 42 containers of illegally transshipped textiles and wearing apparel from China had been seized by the US Customs as a result of one investigation, 25 containers from the same source as a result of another. During 1999 US Customs officers visited the Czech Republic; Hong Kong, China; Indonesia; Macau, China; Malaysia; and Singapore. Problems uncovered in these visits involved lack of documentation, value-related issues and suspect production records. Over 160 companies were suspected of illegally transhipping merchandise. According to the report, the majority of illegally transshipped goods originated in China and transit economies near China. The problem had been more prevalent in Hong Kong, China and Macau, China. With respect to Hong Kong, China, joint observation visits had been conducted with Hong Kong, China officials in late January and early September 1999. The first visit found 27 of the 55 factories visited suspected of being involved in transshipment, or close to a 50 per cent suspicion rate. The second visit found 24 of the 51 factories visited suspected of being involved in transshipment, again close to a 50 per cent suspicion rate. If the enforcement measures being taken by Hong Kong, China were having an impact, such an impact would have been measured by the percentage of companies suspected of transshipment. In 1999, US Customs officials in Hong Kong, China, transmitted the names of 124 additional factories convicted of transshipment, bringing the total number published in the administrative lists since the initiative began in 1997 to 364. Of these, 56 had been convicted multiple times of textile transshipment, some as many as four times. As regards Macau, China, two verifications were made by the US Customs in Macau, China in January and September 1999. In January 117 factories were visited and 39 were found either to be closed, transhipping or unable to provide production records, or with limited capacity to produce, i.e. a 33 per cent suspicion rate. In September, 65 factories were visited and 14 found to be either closed transhipping or unable to provide production records, a 22 per cent suspicion rate. While this was an improvement over the first 1999 visit, it should be noted that suspicion rates are not reliable due to the difficulty in targeting manufacturers in Macau, China because of the MID (manufacturers identification) problem. According to the US Customs report, Macau, China had not been as cooperative as Hong Kong, China in supplying the US Customs with information on the companies which had been assessed administrative penalties for being involved in textile transhipment. In response to this lack of cooperation, the US Committee for the Implementation of Textile Agreements (CITA) had excluded the products of 77 factories in Macau, China that were found closed or that could not provide production records based on the US Customs production verification visits within the previous two years. This had subsequently been reduced to 74 factories, on the basis of petitions filed by the factories for relief.

470. The communication received from the ITCB members also touched upon the issue of circumvention. According to this communication, restraining Members, particularly the United States, continued to allege widespread circumvention of quota restrictions. They had established a variety of procedures and requirements with the ostensible purpose of preventing circumvention. Thus, for example, in 1999, the US Customs had issued a regulation providing that textile products would be denied entry where the manufacturer named in the entry document was,

[169] The TMB inquired as to whether a similar report was available for the year 2000. The United States answered that "Customs is considering whether to update the report, but has not made a final decision on a subsequent edition at this time".

inter alia, "unable to produce records to verify production". This requirement established a presumption of circumvention causing adverse consequences for exporters and importers. Pursuant to these requirements, imports from companies in a number of restrained Members were denied entry and were placed on the so-called convicted list. The submission emphasized that the ITCB members did not condone any circumvention of quotas. But it appeared that the extent of the problem was greatly exaggerated. According to the US Customs' own report, actual shipments seized as transshipped or detained as suspected transshipment in 1999 amounted to only 0.068 per cent of its total imports in that year. What was of particular concern was the fact that while investigations into instances of alleged circumvention are made unilaterally in a summary manner, the burden of proving innocence is placed entirely on the exporters concerned. By tarnishing the image of these exporters, the utilization of restrained Members' access is adversely affected.

471. Due to the markedly opposing views and comments made the United States and the ITCB members, the TMB decided to seek further comments and information from them with respect to each other's assessment and information provided. The Body also decided to request additional information from Canada and the European Community with respect to this subject-matter, in particular in light of the comments that had been made in the ITCB's submission. Furthermore, since the US Customs Service report (referred to in paragraph 469) had devoted particular attention to specific initiatives related to Hong Kong, China and Macau, China, comments and information were also sought from these two Members.

472. In reply to the TMB, the ITCB members commented that the US's statement did not establish wide-spread circumvention of quotas, as alleged. Based on the US Customs' own report relating to the year 1999, shipments seized as transshipped, including those detailed as suspected transshipments, amounted to only 0.068 per cent of the total imports in the year. The report also showed that this percentage was a drop from 0.125 per cent in 1997 and 0.105 per cent in 1988. In any event, it followed that the extent of circumvention was greatly exaggerated. And the measures put in place, ostensibly to prevent circumvention, appeared to be far in excess of being "necessary" or proportionate. In this connection, a US regulation, pursuant to which, according to the ITCB members, excessive documentation requirements from exporters have been prescribed, was attached to the ITCB's communication. On the basis of that regulation, a listing of documents demanded by the US Customs from importers could be established, as follows:

- factory production records demonstrating that raw materials were obtained by the factory and were available for production;
- bills of lading and Customs clearance records, if raw materials or parts are moved between countries;
- mill certificates;
- cutting records for products assembled from cut components;
- assembly or production records maintained on the factory floor by production manager;
- list of number and types of machinery available for production;
- time records and salary records to show that employees identified were actually working during the time-period;
- electricity bills;

- documentation from the sub-contractor in the case of outward processing assembly work and sub-contracting.

473. The comments received from Hong Kong, China were the following:

"… Hong Kong, China takes the issue of illegal transshipment seriously. We do not condone any illegal textile transshipment and are determined to take necessary actions to uphold the integrity of our textiles export control system.

The US Customs Service Report on Hong Kong, China in the US submission covers activities in 1999. Since then, Hong Kong, China has stepped up the enforcement actions vigorously and has introduced new measures to tackle the problem, including strengthening our Customs' intelligence system to target unscrupulous traders, examination of consignments at the boundary and real time production checks at factories. These enhanced enforcement measures have resulted in increased seizures and prosecutions.

At the same time, Hong Kong, China has also enhanced its co-operation with the US over enforcement. The US Customs Administration fully acknowledges Hong Kong, China's efforts and co-operation. We will continue our efforts in this direction in the days to come.

The so-called suspect rate of the joint visits mentioned in the US Customs Service Report must also be viewed in their proper perspective. They only refer to companies referred for further investigation, which may or may not result in the establishment of illegal transshipment. Meanwhile, it should be pointed out that in the latest round of joint visits conducted in Hong Kong, China in November 2000, a higher rate of factories found in order was recorded, which shows that our enhanced enforcement measures have been successful.

Finally, […] the problem of illegal transshipment will not go away until the elimination of quotas in 2005. In this interim, Hong Kong, China remains determined and committed to combating this problem."

474. According to the comments received from Macau, China, the US' statement that the 22 per cent suspicion rate is "not reliable due to the difficulty in targeting manufacturers in Macau, China because of the MID (manufacturer identification) problem" was incorrect, as the Macau Economic Service (MES), following extensive correspondence and a request from the US Customs Service, issued a circular letter requiring the local industry to identify factory names only, in block letters, which they had been doing ever since. This information had been transmitted to the US authorities and it was Macau, China's view that this difficulty should not be stated as a problem because MID requirements were already in place since 16 April 1999. Moreover, after the first production verification made by the US Customs authorities in Macau, China in January 1999, it was agreed that the relevant US Customs report would be submitted to Macau, China "in a couple of months", along with further information on a number of issues that would enable the Macau Economic Service to better undertake its own investigations on any problematic findings of the US authorities. The response to Macau, China's request was belated. In fact copy (incomplete) of the January report was only provided to Macau, China in the course of the September production verification. According to Macau, China, it should be stressed that where cooperation was concerned Macau, China had always kept its commitments under the international agreements to the fullest extent. Macau, China had forwarded to the US authorities information and support requested, even to the extreme of its own domestic laws. Therefore, Macau, China did not see the rationale for CITA's issuance of the "black listing" of 77 local factories. Moreover, 51 of those included therein had already been reported to the US authorities as closed. Macau, China also wanted to point out that it did not seem fair to say that this list had subsequently been reduced to 74 based on petitions filed by the factories for relief, as these factories should not have been included in the list in the first place since they were complying with all domestic and international rules.

475. According to the comments received from Canada, Canada's own experience suggested that circumvention remained an on-going problem that requires constant monitoring. While Canada had not, in recent years, encountered wide-spread circumvention, it would be difficult to conclude whether this would remain the case in the absence of effective monitoring and controls.

476. According to comments from the European Community, "the EC agrees with the United States, that circumvention is contrary to Article 5 of the ATC. Where, as a result of investigation, there is sufficient evidence that circumvention has occurred, Members may take certain remedies, including the adjustment of charges to restraint levels to reflect the country or place of true origin. The EC would like to recall that the question of circumvention is therefore essentially one of fact and does not depend on the "guilt" or "innocence" of the country or place from which the goods have been exported in circumvention of the quota in question".

477. According to comments from the United States, "Customs entry regulations are based on the informed compliance standard, under which US importers are required to ascertain the veracity of claims related to the entry of goods. On occasion, Customs may require that information and documentation be presented to demonstrate the veracity of claims. In contrast to the ITCB statement that these requirements create a presumption of circumvention, in fact, requests for additional documentary evidence are only invoked where there is a reason to suspect circumvention. In addition, it should be noted that very few of the companies on the "Customs Administrative List" are listed because of a failure to provide documentation to support entry claims. The overwhelming majority of companies listed are there because they were found to be closed or to be actually engaged in illegal transshipment. Of the companies that are listed because they were actually engaged in illegal transshipment, some are listed because they were the subject of enforcement efforts by our trading partners, including those that were prosecuted and convicted in courts or otherwise penalized. The companies that were listed as a result of US-initiated enforcement activities were listed only after the following steps occurred: (a) an actual verification visit to the factory by US Customs officials with the authorities of the exporting country, (b) reporting of results of the verification visit to the authorities of the exporting country, (c) follow-up reporting of results to the exporting party, with a specific request to provide details on their enforcement efforts, pertaining to the companies at issue, and then, only if the United States remained dissatisfied that adequate enforcement efforts were being undertaken. It should also be noted that the United States has registered strong concern with several of our exporting country trading partners that export visas have been issued to companies without adequate verification, on their own responsibility, of actual production, and indeed visas have, in some instances, been issued in respect of goods produced in factories that have been closed for a number of years".

E. ADDITIONAL COMMENTS BY THE TMB

478. As reflected in the structure and the 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, applicable to their territory; and

- relying on the cooperation, consistent with their domestic laws and procedures, between the Members concerned.

479. Though they also reveal important differences, the comments and information provided by Members appear to confirm the importance attached to achieving this objective. They also reflect that a lot of effort was made in this area and that the Members concerned give particular importance to enhanced cooperation between them. While several Members were of the view that the extent of the problem of circumvention by transshipment was greatly exaggerated, one Member stated that it

remained extremely concerned about the adequacy of international cooperation to prevent illegal transshipment. Though the TMB does not have sufficient information on the basis of which it could take a position in this regard, the Body tends to agree with the comment made by Hong Kong, China that "the problem of illegal transshipment will not go away until the elimination of the quotas in 2005".

480. In addressing issues related to the implementation of the provisions of Article 5, the legitimate interests of both the exporting and the importing Members should be taken into account in a balanced way. As implied in the comments of Canada (and, in fact, in all other contributions received), effective monitoring and controls will continue. The TMB holds the view that such monitoring and controls

- should be based on the fullest possible cooperation between the Members concerned;
- should not be more burdensome than strictly necessary, in terms of administrative requirements;
- should concentrate the maximum of possible efforts on the prevention of circumvention practices;
- should focus on the establishment of facts in regard to questionable or disputed cases.

481. 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.

VIII. ISSUES REFERRED TO OR TAKEN UP BY THE TMB WITH REFERENCE TO THE PROVISIONS OF ARTICLE 8 OF THE ATC

482. While several provisions of the ATC (such as Articles 2.21, 3.2, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.5, 8.6, 8.9 and 8.10) define specific requirements *vis-à-vis* the TMB regarding the kind of action that has to be carried out or taken by it when addressing issues in the context of the particular ATC provision invoked in a given case, Article 8.1 lays down a more general or all-encompassing mandate for the Body. According to the language of Article 8.1, the TMB is established "[i]n order to supervise the implementation of this Agreement, to examine all measures taken under this Agreement, and to take the actions specifically required of it by this Agreement …".

483. Article 8.5 states that "[i]n the absence of any mutually agreed solution in the bilateral consultations provided for in this Agreement, the TMB shall, at the request of either Member, and following a thorough and prompt consideration of the matter, make recommendations to the Members concerned".

484. Article 8.6 reads as follows: "At the request of any Member, the TMB shall review promptly any particular matter which that Member considers to be detrimental to its interests under this Agreement and where consultations between it and the Member or Members concerned have failed to produce a mutually satisfactory solution. On such matters, the TMB may make such observations as it deems appropriate to the Members concerned and for the purposes of the review provided for in paragraph 11" [of Article 8].

485. Article 8.9 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".

486. Furthermore, according to Article 8.10, "[i]f a Member considers itself unable to conform with the recommendations of the TMB, it shall 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".

487. This Chapter provides an overview of the issues referred to and/or taken up by the TMB during the second stage of the integration process under any of the provisions cited in paragraphs 482 to 486, together with their respective follow-up, if applicable.

A. ISSUES REFERRED TO AND/OR TAKEN UP BY THE TMB WITH REFERENCE TO THE PROVISIONS OF ARTICLE 8.1

1. United States/Turkey: Introduction of a New Restriction

(a) Examination of the measure by the TMB

488. At its meeting of May 1999, the TMB had a discussion in relation to the points raised in a statement made on behalf of a number of WTO Members, that are also members of the ITCB, at the Informal Intersessional Meeting of the General Council on 26 October 1998. The TMB recalled that in the view of those Members "concerns … remain[ed] in respect of measures adopted by an importing Member that [were] not formally notified to the TMB, although these [were] published under the importing Member's domestic procedures and [were], thus, widely known". In the TMB's discussion, it was identified that this observation referred to the introduction by the United States of a new restriction on Turkey's exports of certain textile products, as part of a broader understanding reached between the two Members. The TMB decided to seek clarification from both Turkey and the United States as to whether or not this measure was being applied pursuant to the Agreement on Textiles and Clothing and, if this were the case, under which provision of the ATC this restriction had been introduced.

489. Interim replies were received from the United States in July and September 1999, the latter indicating that the measure concerned Turkey's exports of cotton and man-made fibre underwear (US category 352/652). Consequently, in a joint communication, received on 29 September 1999, Turkey and the United States stated, *inter alia*, that "this measure [affecting Turkey's exports of products of US category 352/652], which was part of a broader agreement contributing to the objective of further liberalizing trade, was mutually agreed between our [two] governments, was consistent with our rights under the ATC, and was taken pursuant to a provision of the ATC which does not require notification to the TMB". The TMB decided to seek further information from Turkey and the United States on the measure itself, as well as on the particular provision of the ATC under which the measure had been agreed. The TMB also decided, pursuant to Article 8.1, to examine the measure in question at a further meeting and agreed to proceed with this examination as soon as possible.

490. As of mid December 1999, no further information had been received from Turkey and/or from the United States. Against this background, and also since there was no indication that a further communication from the two Members would be forthcoming, the TMB examined the measure in question, pursuant to Article 8.1, on the basis of the limited information available to it.

491. The TMB recalled that Article 8.1 requires the Body, *inter alia*, "… to examine all measures taken under [the ATC] and their conformity therewith…". In starting its examination the TMB also recalled that in the joint communication referred to above, Turkey and the United States had indicated that the measure "was taken pursuant to a provision of the ATC which does not require notification to the TMB". In view of the fact that no information had been provided as to the particular provision of the ATC under which the measure had been agreed, the Body undertook to examine briefly all the provisions of the ATC with a view to identifying the provision under which such a measure could have been agreed without requiring its notification to the TMB.

492. The TMB observed, *inter alia*, that Articles 1, 7, 8 and 9 does not provide the possibility of introducing restraint measures on imports from other WTO Members. Restrictions maintained under Article 2 had to be notified, in detail, within 60 days following the entry into force of the WTO Agreement. A measure that had not been notified at all, obviously could not fall under the provisions of Article 2, and no provision under Article 2 provides the possibility of introducing new restrictions. Since restrictions, other than those covered by the provisions of Article 2, also had to be notified within 60 days following the date of entry into force of the WTO Agreement, the TMB observed that the restraint could not have been agreed between Turkey and the United States under the provisions of Article 3.1 either. Article 3.3 does not exclude the possibility, *inter alia*, of introducing new restrictions on textile and clothing products. Rather, it contains not only the requirement of "double" notification (i.e. to the appropriate WTO body and also to the TMB, for its information), but also limits the possibility of applying, *inter alia*, new restrictions to those cases where the measures were taken under any GATT 1994 provision; however, the restraint between Turkey and the United States, had been agreed pursuant to a provision of the ATC. Article 6 specifically provides the possibility of introducing transitional safeguard which takes the form of restraint measures. However, the restraint measure or measures taken under this Article have to be notified to the TMB, whether agreed or applied unilaterally, so as to enable the TMB to examine the measure(s) in question, as required by the provisions of Article 6. Both Members though had stated to the TMB that the measure had been taken "pursuant to a provision of the ATC which does not require notification to the TMB". With respect to Article 5, the TMB observed, *inter alia*, that it referred to situations of "circumvention by transshipment, re-routing, false declaration concerning country or place of origin, and falsification of official documents", and that neither Turkey nor the United States had invoked or reported such a situation. Without prejudice as to whether in particular circumstances a new restriction could be introduced, or not, pursuant to the provisions of Article 5, the TMB, on the basis of the information available to it, concluded that the provision of the ATC referred to by both Turkey and the United States could not be Article 5.

493. In concluding that the measure in question could not have been taken pursuant to Articles 1, 2, 3, 5, 6, 7, 8 and 9, the TMB turned to the examination of the new restraint in the context of the provisions of Article 4. It observed that Article 4.1 deals with the administration of "restrictions referred to in Article 2, and those applied under Article 6". Article 4.4 provides the possibility to reach a "mutually acceptable solution regarding appropriate and equitable adjustment" between Members when necessary changes, in the sense of Article 4.2, are introduced in the implementation or administration of existing restrictions. The TMB noted that, according to Article 4.4, such mutually acceptable solutions did not have to be notified to the TMB. The TMB recalled its findings that the new restriction could not have been agreed pursuant to the provisions of Articles 2 and 6. It was also observed that Article 4.4 did not provide explicit guidance regarding the scope of the adjustment that could be agreed between the Members concerned in the framework of the mutually acceptable solution. A reading that the introduction of a new restriction, in the sense of Article 2.4, could be agreed upon pursuant to Article 4.4 as an adjustment to balance possible improvements in the implementation or administration of restrictions maintained pursuant to Article 2 was, however, in the view of the TMB, not consistent with the intention of the drafters of the ATC, since Article 4 related to the implementation or administration of the restrictions referred to in Article 2, or applied under Article 6. Also, the construction of Article 4 and its language seemed to suggest that when changes, in the sense of Article 4.2 are introduced, the appropriate and equitable adjustment referred to in

Article 4.4 can only involve and affect the restrictions that have already been in place and have been notified pursuant to Article 2 or Article 6.

494. The TMB regretted that, despite its repeated requests and given that almost seven months had lapsed since it had first requested information on the measure, the parties had not provided the information the Body had sought from them on the measure itself, as well as on the particular provision of the ATC under which it had been agreed. The TMB recalled, in this regard, that full cooperation from the Members was indispensable for facilitating the Body's task of examining, in accordance with Article 8.1, the measures taken under the Agreement and their conformity therewith and that failure to provide information by Members hampered the TMB's ability to discharge its functions in accordance with the requirements of the ATC.

495. In concluding its examination of the measure mutually agreed between Turkey and the United States, the TMB recalled that Article 2.4 states that "[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". After having considered the new measure against the different provisions of the ATC on the basis of the information available to it, the TMB concluded that the measure agreed upon by Turkey and the United States, affecting imports by the United States of category 352/652 products, had not been demonstrated to be in conformity with the provisions of the ATC.

(b) Subsequent developments

496. At the meeting of the CTG of 15 November 2000, when the Council took note of the annual reports of the subsidiary bodies, including that of the TMB, the representative of Hong Kong, China noted that the TMB report summarized the Body's review of a bilateral restraint agreed between the United States and Turkey on Turkey's exports of cotton and man-made fibre underwear to the United States. The TMB had concluded that the restraint measure agreed upon by Turkey and the United States had not been demonstrated to be in conformity with the provisions of the ATC. He appreciated that the TMB had taken the initiative to examine the measures concerned but he understood that the restrictive measure in question still remained in force. Under paragraph 5 of Article IV of the Agreement establishing the WTO, the CTG had the overall responsibility for overseeing the functioning of the multilateral trade agreements pertaining to trade in goods. He hoped that the CTG would urge the United States to take appropriate action in the light of the conclusion of the TMB on this matter. The representatives of India and Pakistan associated their delegations with the views expressed by Hong Kong, China. The representative of the United States did not share the opinion of the three delegations and suggested that the Chairman of the CTG consult to clarify exactly what was being asked. The Chairman accepted to initiate informal consultations with interested Members in an attempt to clarify the contents and scope of additional consultations on this particular item.[170]

497. At the following meeting of the Council, held on 14 March 2001, the Chairman reported that though consultations had been held on this matter, they had not been successful in clarifying the scope and the contents of additional consultations on this particular item. The representative of Hong Kong, China stated, *inter alia*, that his delegation had a serious systemic concern about certain new restraints on textiles and clothing products being implemented by certain Members. This new restraint was, after the TMB's examination, clearly inconsistent with the ATC. He was even more concerned with the difficulty that the TMB encountered during the examination process – where this body was refused essential information from the two parties concerned. He believed that the CTG had a responsibility for overseeing the functioning of the ATC. He reiterated that his delegation was not disputing the contents of the TMB's report. Indeed he commended the TMB for its meticulous work in the absence of certain essential information from the Members concerned. In addition, the new restraint was not a single isolated incident. The TMB was reviewing a new restriction introduced by a

[170] See G/C/M/46.

restraining country on imports of certain textile products from a developing country Member. So far, appropriate explanation or justification of such a measure had not been forthcoming. If these measures were not clarified and rectified promptly, the objective of liberalization of textile and clothing sector and its full and faithful re-integration into GATT rules would be defeated and the confidence in the multilateral trading system seriously undermined. Moreover, the effective functioning of the TMB would be hampered. Despite the TMB's efforts, the questionable measures remained to be clarified or rectified and the CTG had a crucial role to play in this respect. While this issue might be raised towards the end of 2001 when the CTG will conduct the second major review of the implementation of the ATC under Article 8 of that Agreement, the systemic concern was so serious that he saw the urgency to address it as soon as possible. To restore confidence in multilateral disciplines, he asked the Council to request all Members, particularly the restraining countries, to promptly provide detailed information to the TMB of any new restraints which have not been properly notified and to take necessary steps to bring them into conformity with the provisions of the ATC. The representatives of Brazil, India and Pakistan shared the systemic concern on the issue voiced by Hong Kong, China.

498. In reply, the representative of the United States noted, *inter alia*, that she had systemic concerns about how the process in the WTO should be conducted. There would be in 2001 a review, as provided for under Article 8 of the ATC, on the implementation of the ATC. Article 8 referenced the fact that the TMB was to prepare a comprehensive report which included its work in its oversight of the integration process and other parts of the ATC. Therefore, this issue should have been raised in the context of rules already provided for under the ATC. Noting that reference had been made to Article IV of the WTO Agreement, she said that under customary international law, agreements with a specific provision would have precedence over a general provision. Here, the ATC had a specific provision related to its role in overseeing the implementation of the ATC. Notwithstanding the fact that the WTO Agreement included in Article IV the oversight provided of the TMB in the context of the ATC, there was also a specific provision in Article 8 of the ATC dealing with the CTG's role in overseeing the implementation of the ATC. The United States did not support the premise or context for the request, nor the request. She believed that the measure as notified was consistent with the ATC and that there were grounds under the ATC for such a measure. She contended that if the item came up again she considered the discussion to have been exhausted. The representative of Turkey shared the views expressed by the United States. The representative of the EC said that at the heart of this matter was Article 8.6 of the ATC, where there were provisions in case the examinations at the request of a Member did not lead to a satisfactory result. These pointed at the review and not at the individual case-by-case examination of the CTG. He agreed with those who saw Article 8.11 where the oversight of the implementation of the Agreement was meant, would be the more appropriate course to address this matter.

499. The Council took note of the statements made and noted that the issue would be kept in the agenda of the next meeting of the CTG, as a request from India; Pakistan and Hong Kong, China.[171]

500. On 6 April 2001, Colombia; Costa Rica; Hong Kong, China; India; Indonesia; Pakistan and Peru submitted a joint communication entitled "CTG's Oversight Function Pursuant to Article IV of the Agreement Establishing the WTO – Transparency Regarding New Restrictions on Textile and Clothing Products Commented Upon by the Textiles Monitoring Body".[172] The communication, after providing a detailed background on why its sponsors deemed it important that measures taken in textiles and clothing products covered by the ATC be carefully monitored and scrutinized, and re-stating in details the position expressed by Hong Kong, China in the previous meeting of the CTG, proposed that the CTG

[171] See G/C/M/47.
[172] See G/C/W/260.

- 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;

- invite the Members concerned to clarify and rectify the measures that have already been the subject of TMB review and comments;

- re-emphasize the need, particularly for the restraining Members, to ensure the conformity of all measures with their obligations under the Agreement".

501. The joint communication was introduced during the meeting of the CTG on 18 April 2001. The delegations of the United States and Turkey, emphasizing that the measure in question was bilaterally agreed and that they considered it to be consistent with the ATC, opposed the adoption of the actions proposed by the proponents of the joint communication. The Chairman indicated that he would hold consultations on the matter and report back at a future Council meeting.

502. At the CTG meeting on 5 July 2001, the proponents of the joint communication reiterated their concern that the bilateral restraint agreed between the United States and Turkey was in violation of the ATC, and that this had serious systemic implications for the implementation of the ATC. They had brought this measure to the CTG as it had a specific oversight role in the ATC, and reiterated their position that the Council adopt certain recommendations to preclude such a situation arising in the future. The United States, supported by Turkey, repeated its argument that the issue at stake did not require action by the CTG at that stage but should be dealt with under the appropriate provisions of the ATC which require the CTG to conduct a major review of the implementation of the ATC; this review was scheduled to begin in mid-September 2001. In view of the continuing disagreement, the Chairman of the CTG undertook to hold consultations, both on the procedural and on the substantive aspects of the matter.

(c) Follow-up by the TMB

503. In the context of the preparation of this 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 Turkey and the United States to the measures agreed between them for which information had been sought by the TMB but had not been provided and on which the TMB had reached certain conclusions on the basis of the limited information available. Turkey stated, in response to the TMB, that this issue "is still considered by the Turkish competent authorities. There is no further development in this area at the moment. The TMB will be informed of any future development accordingly". The United States did not offer any comment with respect to this matter.

2. Visa Requirements by the United States in Respect of Products Integrated During Stage 2

504. In June 1998, the TMB received a communication from Hong Kong, China; India and Pakistan, jointly requesting the TMB "to review, in accordance with Articles 8.1 and 2.21 of the Agreement on Textiles and Clothing, the implementation of the Stage 2 integration programme of the United States of America with respect to the continuation of visa requirements for products included in this programme". Since the communication referred not only to Article 8.1, but also to Article 2.21 and its subject-matter was closely related to the implementation of specific provisions under Article 2, the details of the communication and the related follow-up are reported in the Section dealing with the implementation of the Stage 2 integration programmes.[173]

[173] See paragraphs 58 to 62.

B. MATTERS BROUGHT TO THE TMB PURSUANT TO ARTICLES 8.5 AND/OR 8.6

1. Communications Made by Honduras Pursuant to Articles 8.5 and 8.6.

(a) Consideration of the communications by the TMB

505. In early January 1998, Honduras addressed a communication to the TMB expressing the view that there was no justification for the United States to maintain the restraint measure previously agreed between Honduras and the United States in respect of exports of cotton and man-made fibre underwear (category 352/652) from Honduras. As the continuation of the restraint was detrimental to Honduras' interests under the ATC, and since consultations held by Honduras with the United States had failed to produce a mutually satisfactory solution, Honduras requested the TMB, pursuant to Articles 8.5 and 8.6, to promptly consider the matter and recommend that the United States withdraw the measure forthwith.

506. The TMB considered this communication during its January 1998 meeting, with the participation of representatives of the two parties. In conducting its review of the matter brought to it by Honduras, the TMB recalled that the measure in question had been agreed with the United States for a period of three years ending on 26 March 1998, and had been notified pursuant to Article 6.9. The TMB also noted that when it had reviewed this agreed restraint measure, in December 1995, it had, *inter alia*, recalled that at its second meeting, when reviewing the action taken by the United States pursuant to Article 6.10 against imports of category 352/652 from Costa Rica and Honduras under Articles 6.2 and 6.3, it had found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB had not, however, reached consensus on the existence of actual threat of serious damage. The TMB was aware of the fact that, during this review, it had not pronounced itself on the justification of this agreed restraint measure in accordance with the provisions of Article 6. The TMB had also noted, in December 1995, that the total level of the agreed restraint, as well as that portion of the restraint which was available unconditionally to Honduras (i.e. the specific limit) were both substantially above the rollback level as defined in Article 6.8.

507. The TMB further noted that Honduras considered that the continuation of the measure was detrimental to its interests because (i) when the TMB had reviewed the agreed restraint measure it had not determined whether this agreement was justified in accordance with the provisions of Article 6; (ii) a WTO panel, subsequently reviewing the market statement, on the basis of which the United States had made requests for consultations pursuant to Article 6.7 of the ATC on category 352/652 *vis-à-vis* a number of WTO Members including Honduras, had concluded that the United States had violated its obligations under Article 6 of the ATC by imposing restrictions on imports from Costa Rica and that, therefore, in the view of Honduras, there was no legal basis for the United States to maintain the measure; (iii) imports from Honduras of products of category 352/652 continued to be restrained at the levels set in the bilateral agreement despite the fact that restraint measures applied by the United States under Article 6 on imports of the same products from some other sources had ceased to exist, thereby adversely affecting business opportunities.

508. The TMB also noted that the United States did not agree that the continuation of the measure was detrimental to Honduras' interests, in particular, in view of the fact that the restraint had never been fully utilized by Honduras. The United States emphasized that this measure had been bilaterally agreed with Honduras. It also stated that Honduras had not been a party in the consideration of the matter raised by Costa Rica in the DSB.

509. The TMB was aware of the conclusions of the report of the Panel, as modified by the Appellate Body report, adopted by the DSB in February 1997, referred to by Honduras. The TMB also noted the explanation by the United States that the measure at issue with Costa Rica had expired on 28 March 1997 without being extended. The TMB further noted that, according to Honduras, the

United States had provided on request in the recent past substantial increases in the restraint measure applied on the same product to another WTO Member.

510. The TMB observed that the agreed restraint measure had been introduced for a three-year period. It understood, as confirmed by the United States, that the measure would end at latest on 26 March 1998. The TMB further observed that, in accordance with Article 6.12, this measure could not be extended.

511. The TMB, bearing in mind its December 1995 review of the agreed measure, the evolution of imports from Honduras into the United States of products of category 352/652 and the corresponding level of the restraint, the fact that the restraint was due to expire at latest on 26 March 1998, and the statement and arguments by Honduras that its maintenance was detrimental to Honduras' interests, invited the United States to reconsider the necessity to maintain the restraint in force until its scheduled expiration date.

512. The TMB noted that until the expiration of the measure positive consideration could be given by the United States to any possible concern that would be brought to its attention by Honduras, so as to avoid future exports of this product to the United States from Honduras being adversely affected.

513. On 5 February 1998, Honduras addressed another communication to the TMB requesting it, pursuant to Articles 8.5 and 8.6, to make a specific determination under Article 6.9 whether the restraint maintained by the United States on imports of category 352/652 products was justified. This issue was considered by the TMB during its subsequent meeting (held in three sessions, on 16 and 17 February, 24 February and 3 March 1998). The TMB noted, *inter alia*, that subsequent to its consideration, at its meeting in January 1998, of the issue raised by Honduras, Honduras had communicated a written request to the United States, requesting the United States to take action to either remove the Article 6 restraint on category 352/652 products or to eliminate the US Customs entry requirements for that category. The TMB also noted that the United States was reviewing this request in light of the TMB's January statement and indicated that it would respond to Honduras when this review was completed. In light of further clarifications provided by the representative of Honduras, the TMB understood that the concerns brought to its attention by Honduras were twofold: (i) the absence of determination by the TMB, pursuant to Article 6.9, of the justification of the restraint in accordance with the provisions of Article 6; and (ii) the lack of positive reaction from the United States following the consideration by the TMB of the previous communication made by Honduras.

514. In reviewing the request by Honduras to make, pursuant to Articles 8.5 and 8.6, a specific determination under Article 6.9 of the justification of the restraint, the TMB addressed a number of issues, including (i) the procedural requirements for invoking and re-invoking, respectively, the provisions of Articles 8.5 and 8.6 and (ii) whether a reference to Article 8.5 or 8.6, or to both articles, could trigger the resumption of the review of an agreed restraint measure that had been notified pursuant to Article 6.9 and had already been reviewed. The TMB noted the statement of the representative of the United States that, in her view, the consultations contemplated in both Articles 8.5 and 8.6, invoked by Honduras, had not taken place between the two Members on the particular matter, the subject of the communication by Honduras on 5 February 1998. The TMB also noted the view of the representative of Honduras that this matter had already been raised with the United States on a number of occasions and was also inherent in the latest exchange of letters that had taken place subsequent to the January 1998 meeting of the TMB. Furthermore, the TMB considered that the ATC did not provide for the re-reviewing, pursuant to Article 6.9, of agreed restraints, reviews of which had already been completed by the Body. The TMB recognized, on the other hand, that during its review of the agreed restraint in 1995 it had not been able to make a determination on the justification of this measure, a situation which was not foreseen in the ATC. Considering the legal, procedural and substantive elements involved, and keeping also in mind the timing of the request of Honduras, the TMB considered that, under Articles 8.5 and 8.6, it was not in a position to make a specific determination under Article 6.9 whether the restraint maintained by the United States on imports of category 352/652

products was justified. The TMB observed that such a determination would have, in any event, been of limited practical purpose, since the restraint was due to expire in about 30 days.

515. As to the other aspect of Honduras' concern, the TMB recalled that, at its previous meeting, it had, *inter alia*, invited the United States to reconsider the necessity to maintain the restraint in force until its scheduled expiration date, i.e. 26 March 1998. The TMB considered that this invitation called for a quick and thorough follow-up by the United States. In these circumstances, the TMB had concerns that neither Honduras nor the Body had yet been informed by the United States of the outcome of its consideration of the matter.

516. The TMB decided to extend its meeting and to resume the consideration of the issue on 24 February 1998. During this resumption, the TMB was informed by the United States that it was in the process of revising its customs entry requirements for category 352/652 products from Honduras, in order to alleviate pressure on the specific limit on such imports. The details of this action would be communicated to the TMB shortly. In view of this, and mindful of the fact that Honduras had, on 28 January 1998, requested the United States to take action to either remove the Article 6 restraint on category 352/652 or to eliminate the US Customs entry requirements for that category, the TMB decided to postpone its consideration of the matter until 3 March 1998 by which time, the TMB understood, the details of the US' action would have been communicated to it.

517. The United States, in a letter dated 2 March 1998, stated *inter alia* that "the TMB's decision on 22 January 1998 concerning Honduras category 352/652 noted that the United States can give positive consideration to concerns brought to its attention by Honduras. The United States later received a letter from Honduras requesting the implementation of flexibility available for this category. The U.S. [had] given this flexibility to Honduras through a notice published in the Federal Register. The letter also stated that U.S. companies were contacting Honduras with requests for additional specific limit quota for shipments scheduled before the expiration of the restraint on 26 March 1998. The United States would like to facilitate this request from Honduras in the following way. In order to prevent disruption to shipments chargeable to the category 352/652 specific limit, the authorities in Washington will charge to the 352/652 GAL[[174]] shipments in excess of the specific limit. As the TMB is aware, the GAL for this category is quite large and can easily accommodate this".

518. Honduras responded with a further letter, dated 2 March 1998, stating that this technical proposal to charge specific limits shipments to the GAL would violate the US' own rules regulating quota merchandise and that it would expose Honduras to charges of circumvention. Honduras could not support actions that would undercut the commitment of both the government and the private sector to strictly abide by the legal requirements. Honduras, therefore, requested the TMB to recommend to the United States to rescind the restraint or to remove the entry requirements for this category in accordance with the procedure that had been established in the case of two previous restraints regarding Costa Rica and India, involving actions under Article 6 of the ATC.

519. In resuming its consideration of the matter on 3 March 1998, the TMB considered the additional communications received from Honduras and the United States. The Body understood from the communication of the United States that while the United States would maintain the restraint in place until its scheduled expiration date, i.e. 26 March 1998, it had decided as from 2 March 1998 to implement this measure in such a way that exports from Honduras would not, in practical terms, be embargoed. The TMB considered that, although the United States had not removed the Article 6 restraint on category 352/652 products or eliminated the US Customs entry requirements for that category, as requested by Honduras, it had taken steps to ensure that the practical concerns raised by Honduras, in particular during the January 1998 meeting, had been responded to positively.

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

520. The letter by Honduras, dated 2 March 1998, confirmed that it had requested the TMB to recommend to the United States to either rescind the restraint or to remove the entry requirements for this category in accordance with the procedure that had been established in the case of two previous restraints with regard to Costa Rica and India, involving action under Article 6 of the ATC. With respect to the first option, the TMB recalled that, it considered that, under Articles 8.5 and 8.6, as requested by Honduras, it was not in a position to make a specific determination under Article 6.9 whether the restraint maintained by the United States on imports of category 352/652 products was justified. With respect to the second option, the TMB understood that though the US' revision of its customs entry requirements would not meet all the concerns of Honduras, it had responded to most of the practical concerns Honduras had expressed.

521. The TMB considered that it was not within its jurisdiction to ascertain whether the US' action, notified in the letter from the United States on 2 March 1998, would violate the US' own rules regulating quota merchandise, as stated by Honduras. The TMB noted the concerns expressed by Honduras, in this regard. The TMB observed, however, that in view of the low utilization rate of the specific limit and of the fact that the restraint was due to expire in 23 days, it was unlikely that, in practice, the United States would have to charge to the 352/652 GAL shipments in excess of the specific limit. In these circumstances, the concerns expressed by Honduras would, therefore, be unlikely to materialize. For the same reasons, the TMB did not consider it appropriate to discuss the possibility of taking further action on this particular matter. Bearing in mind all the elements mentioned above, the TMB took note of the communications made by both Honduras and the United States, as well as of the action taken by the United States, and considered that it had completed its review of the matter.

(b) Comments made subsequently in the General Council

522. During the meeting of 9 to 11 and 18 December 1998 of the General Council, in taking note of the annual reports of other WTO bodies, a few statements were made which also touched upon aspects of the TMB's review of the matter referred to it by Honduras. Referring to the TMB's annual report and more specifically to those paragraphs which summarized the Body's review of this issue, the representative of Honduras stated, *inter alia*, that in light of the unequivocal ruling of the Panel and the Appellate Body in the US/Costa Rica case (affecting the same products), Honduras had expected that the TMB would reverse its previous decision. Despite the clearcut ruling of the Panel, the TMB had merely invited the party to reconsider the need for maintaining the restraints until the stated expiry date. It was necessary for the TMB's review process to be effective in order to ensure that protectionist measures did not remain in effect if they did not meet the criteria of the Agreement. The continued restraint referred to was prejudicial to the trading interests of Honduras under the Agreement and put it in a position of inequality *vis-à-vis* other trading partners, thus, leading to an additional burden on the Honduran industry.

523. The representative of India strongly endorsed the point made by Honduras. After there was a report of a panel or the Appellate Body regarding a particular restriction, the TMB had a responsibility to take into account that particular report and to review the restriction if this was called for under the ATC. He understood that the TMB had not discharged its responsibility. He trusted and hoped that it would be possible for the TMB in future to take on board the decisions and rulings contained in panel and Appellate Body reports. The TMB should ensure that it applied the standards applied in panel reports and Appellate Body reports, and that all of the measures taken under the ATC were taken into consideration and appropriately reviewed as required in Article 8.1. The representative of the Dominican Republic also supported the statement by Honduras. The representative of Brazil said that, regarding the impact of panel reports and decisions, it was the well-

known position of Brazil that decisions relating to specific dispute settlement cases applied only to those cases.[175]

(c) Views and comments of WTO Members in response to the TMB's general request for information

524. In the contribution provided by the ITCB Members to the request for notifications and information made by the TMB in the context of the preparation of the present report, it is mentioned (under the heading dealing with the functioning of the TMB) that "although a restraint measure had been found by a dispute panel to be inconsistent with the ATC the TMB refused to declare another measure on the same product adopted on the basis of the same market statement to be inconsistent. In the process, the TMB failed to observe the standard of review established by the panel process". It appears that these comments are related to the review of the TMB of the issue raised by Honduras.

(d) Additional comments by the TMB

525. In reflecting on this matter, in particular in light of the comments of ITCB members, in paragraph 524, the TMB made the following points:

- Honduras, in its request to the TMB, invoked two provisions of the ATC, namely Articles 8.5 and 8.6. Article 8.5 requires the TMB to have a thorough and prompt consideration of the matter refered to it and to make recommendations to the Members concerned. Article 8.6 requires a prompt review and, pursuant to this provision, "the TMB may make such observations it deems appropriate to the Members concerned and for the purposes of the review provided for in paragraph 11 [of Article 8]". The review conducted by the TMB met the requirements established in Article 8.6 and, to the extent that it considered the matter promptly and thoroughly, its review was in line with the provisions of Article 8.5 as well. On the other hand, the TMB recognized that it had not made the recommendation requested by Honduras, but offered comments and invited the United States to reconsider the necessity to maintain the restraint in force until its scheduled expiration date;

- the scheduled expiration date was one element in the TMB's consideration, since the issue had been referred to the TMB less than three months before the final date of expiration of the measure in question. It can be of some interest as well that the decision by the DSB to which Honduras made reference was taken in February 1997, while the first communication of Honduras was addressed to the TMB in January 1998. The timing and the fact that the restraint was far from being fully utilised provided additional elements to the TMB's consideration of the more substantive aspects which would have involved the re-opening of a review already conducted and concluded much earlier, pursuant to Article 6.9;

- as recalled earlier, the root of the problem was the TMB's inability to make a determination on the justification of the measure when it had reviewed it under Article 6.9 in 1995. The TMB is of the view that, as clearly reflected in Chapter III, it had drawn the full consequences with respect to the Body's examination of measures referred to it pursuant to Article 6;

- the standards of review established by the Panel process were not available in 1995, and Honduras had not participated, not even as third party, in the panel proceedings in question. Had the TMB decided in 1998 to re-open its examination conducted in 1995 and had it reached conclusions and recommendations different from the panel's

[175] See WT/GC/M/32.

ruling and recommendation, a failure to observe the standard of review established by the panel process could have been claimed.

2. Communication Received from Pakistan

526. On 6 April 2000, the TMB received a communication from Pakistan under Article 8. This followed the review by the TMB in 1998, of two communications made by Pakistan and the United States, of a mutually satisfactory solution reached between those two Members, on 22 March 1996, with respect to matters related to transshipment charges for US category 361 (cotton bedsheets). Whereas the United States had made its communication pursuant to Article 5, the communication by Pakistan had been made pursuant to Article 2.17. In the recent communication, Pakistan reported that "following careful and detailed re-examination of the matter relating to the 'introduction of a limit on man-made fibre bedsheets and pillowcases (category 666-S and -P)' in light of the Body's comments and considerations, [the] Government of Pakistan agrees that the subject restrictions did not conform to the provisions of the ATC. Consequently it requested consultations with the Government of the United States. Regrettably, during consultations held between [the] two governments, it had not been possible to arrive at a mutually agreed solution conforming to the provisions of the ATC." In view of that, Pakistan requested the TMB to "consider the matter pursuant to Article 8 (in particular to paragraph 5 thereof) and recommend that the United States withdraw the limits on Pakistan's exports of category 666-S and -P".

527. The TMB scheduled to examine this communication during its meeting of May 2000, with the participation of representatives of both Members. At the beginning of the consideration of this matter, the representative of the United States requested that the consideration by the TMB be suspended to allow for further consultations between the two Members. Pakistan agreed to this request and the TMB, therefore, suspended its consideration. Subsequently, the representatives of both Pakistan and the United States informed the Body that the renewed consultations had been productive and requested the TMB to postpone its further consideration of this matter, since they expected that this would allow them to finalize a mutually agreed solution. They also indicated that they would report back to the TMB in due course on the outcome of their consultations. The TMB agreed to this request.

528. Since in a mutually satisfactory solution subsequently notified jointly by Pakistan and the United States, "Pakistan […] withdraws its request […] for the Textiles Monitoring Body review pursuant to ATC Article 8, paragraph 5, of the limits on [imports of] 666-P and 666-S [products]", no follow-up has been given to this communication under the provisions of Article 8.5. The whole background to the matters raised in this communication as well as subsequent developments are reported in detail in Chapter VII of this report.[176]

C. THE TMB'S SURVEILLANCE OF THE IMPLEMENTATION OF ITS RECOMMENDATIONS PURSUANT TO ARTICLE 8.9

529. Throughout the period covered by the present report, the TMB has kept in mind its obligations under Article 8.9 which is to exercise proper surveillance of the implementation of the recommendations made by the Body. This surveillance was particularly relevant in the context of the examinations conducted and recommendations made with respect to the transitional safeguard measures, referred to the Body either under the provisions of Article 6, or pursuant to Article 8.10. In all these cases, when the Members concerned had not informed the TMB of their intention regarding the implementation of the recommendation(s) made by the TMB and/or their respective decisions, the TMB decided to seek this information from them. Replies were provided by Members to all such requests by the TMB.

[176] See paragraphs 435 to 464.

D. ISSUES REFERRED TO THE TMB PURSUANT TO THE PROVISIONS OF ARTICLE 8.10

530. During the second stage of the integration process, on a number of occasions, the Members concerned considered themselves unable to conform with the respective recommendations made by the TMB and provided the Body, pursuant to the provisions of Article 8.10, the reasons for their inability not later than one month after the receipt of such recommendations. All these cases concerned recommendations of the TMB in relation to transitional safeguard measures introduced under Article 6.10 (United States/Pakistan; Colombia/Korea and Thailand) or applied provisionally with reference to Article 6.11 (Argentina/Brazil). In all these cases, the TMB gave thorough consideration of the reasons given and, in light of the outcome of such consideration, issued further recommendations to the Members concerned. It should be observed that, in each of these cases, the conclusions reached and recommendations made by the TMB upheld the conclusions and recommendations adopted by the Body as a result of its examination of the measures in question pursuant to the applicable provision of Article 6. All the cases referred to the TMB under Article 8.10, together with the related consideration of the Body, are reported in detail in the Chapter dealing with the application of the transitional safeguard mechanism.[177]

IX. 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

531. 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.

[177] See Chapter III.

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. COMMENTS MADE BY THE TMB IN ITS FIRST COMPREHENSIVE REPORT

532. In its first comprehensive report the TMB offered the following comments with respect to the implementation of the provisions of Article 7:

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

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

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

300. The TMB observed furthermore that the compliance of Members with the notification requirements of Article 7.2 had not been satisfactory. The TMB expressed the hope that progress would be achieved in this regard in the upcoming period."[178]

C. CONCLUSIONS ADOPTED BY THE COUNCIL FOR TRADE IN GOODS IN FEBRUARY 1998 IN ITS FIRST MAJOR REVIEW

533. The conclusions adopted by the CTG contained, *inter alia*, the following:

"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

[178] See G/L/179.

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."[179]

D. NOTIFICATIONS OF MEMBERS AND/OR THEIR ASSESSMENTS REGARDING DEVELOPMENTS DURING THE SECOND STAGE OF THE INTEGRATION PROCESS

1. Notifications Falling Under the Provisions of Articles 7.2 and 7.3

534. No notifications or reverse notifications have been addressed to the TMB with specific reference to the provisions of Article 7.2 since the beginning of the implementation of the second stage integration process.[180]

535. Though they were not referred to the TMB with specific reference to either Article 7.2 or Article 7.3, the TMB received two communications from the United States for its information. Both communications consisted of copies of official DSB documents requesting consultations on 30 May 2000 under the provisions of the DSU and other applicable Multilateral Trade Agreements. One of these communications, requesting consultations with Brazil, stated, *inter alia*, the following:

> "On 13 February 1998, Brazil established under Decree No. 2.498/98 and other related statutes and regulations a system to verify the declared values of imported goods. In practice, however, Brazil utilizes this verification system – in conjunction with non-automatic import licensing procedures – to prohibit or restrict the import of products with declared values below the arbitrarily determined minimum prices. This situation appears inconsistent with Articles 1 through 7, and 12 of the Agreement on Customs Valuation; general notes 1, 2 and 4 of Annex 1 of the Agreement on Customs Valuation; Articles II and XI of the GATT 1994; Articles 1 and 3 of the Agreement on Import Licensing Procedures; Articles 2 and 7 of the Agreement on Textiles and Clothing; and Article 4.2 of the Agreement on Agriculture."[181]

536. The other communication, requesting consultations with Romania, contained, *inter alia*, the following:

> "Pursuant to its Customs Code of 1997 (L141/1997), the Ministry of Finance General Customs Directive (Ordinance No. 5, 4 August 1998), and other related statutes and regulations, Romania has arbitrarily established minimum and maximum import prices for such products as meat, eggs, fruits and vegetables, clothing, footwear and certain distilled spirits. Additionally, Romania has instituted burdensome procedures for investigating import prices when the c.i.f. value falls below the minimum import price. This situation appears inconsistent with Articles 1 through 7, and 12 of the Agreement on Customs Valuation; general notes 1, 2 and 4 of Annex 1 of the Agreement on Customs Valuation; Articles II, X and XI of the GATT 1994; Article 4.2 of the Agreement on Agriculture; and Articles 2 and 7 of the Agreement on Textiles and Clothing."[182]

537. The TMB is not aware of the follow-up that has been given to the communications reflected in paragraphs 535 and 536. In the context of the preparation of the present report, the TMB invited Members to submit notifications or information, as appropriate, in relation to, among others, Article 7.1, with special regard to Article 7.2 which provides that "Members shall notify to the TMB

[179] See G/L/224.

[180] Actually, no such notifications were received since the adoption of the TMB's first comprehensive report. Nor were such notifications addressed to the TMB during the first stage of the integration process.

[181] See WT/DS197/1.

[182] See WT/DS198/1.

the actions referred to [in Article 7.1] 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".[183]

2. Information, Views and Comments of WTO Members in Response to the TMB's Request

538. In response to the TMB's request, six contributions were received from Members, touching upon aspects relevant to the consideration of the implementation of the provisions of Article 7. These contributions were made by Canada; the European Community; ITCB members; Japan; Turkey and the United States and are reflected in the paragraphs below.

(a) Canada

539. In relation to Article 7.1, the communication of Canada stated the following:

> "Pursuant to the commitments made by Canada during the Uruguay Round, MFN tariffs on textile and apparel products, for those items that are not already duty-free, continue to decline. Textile tariffs, which were bound in the range of 16 per cent-22 per cent prior to 1995, are now in the range of 14 per cent-16 per cent and will decrease to 12 per cent-14 per cent upon full implementation of Uruguay Round tariff obligations. Similarly, the MFN bound tariff on most apparel has decreased to 20 per cent from 25 per cent prior to 1995 and will decrease to 18 per cent by 1 January 2004. At the same time, 29 per cent of Canada's applied textile and apparel tariff items (8 digits) are currently duty free.
>
> Further, Canada has a policy of unilaterally removing tariffs on manufacturing inputs to enhance the competitiveness of Canadian downstream producers, where such action would not have an adverse impact on other Canadian manufacturers. This policy has resulted in more than $25 million in duty reductions on imported textile products since 1994.
>
> Canadian authorities would note that Canada's tariffs on textiles and apparel, while high relative to other Canadian tariffs, remain significantly lower than in a number of exporting countries."

(b) European Community

540. Under the heading entitled "Market Access", the communication of the European Community included the following:

> "During the second stage the Community has remained preoccupied that certain Members do not consider the obligation to achieve improved access to markets for textile and clothing products as an important part of the integration process, as set out in Article 7 of the ATC. Thus, there is a concern that while the stages of integration up to 1 January 2005 will ensure the removal of quotas by the restraining Members, certain Members will have done little or nothing to improve conditions for access to their own markets for imports.
>
> EU tariffs for textile and clothing imports are low and will go down further due to the EU's commitments in the WTO. Present rates are on average 0.7 per cent for raw materials, 5.3 per cent for yarns and fibres, 6.3 per cent for fabrics and 11.9 per cent for clothing – an overall average of 9 per cent. However, these rates are applied only to a small share of the EU's textile and clothing imports, because of EU commitments under the Generalised System of Preferences (GSP) and other arrangements. Roughly 44 per cent is imported free of tariffs

[183] See G/TMB/24.

and 46 per cent enjoys a GSP reduction of 15 per cent of the MFN tariff rate, thus leaving only about 10 per cent of imports for which the full MFN rate is levied.

The EU's low tariffs and the absence of non-tariff barriers compare with average tariffs for the whole sector ranging between 14 per cent in Indonesia and 25 per cent in Thailand and 39 per cent in India. Tariff peaks, for example, abound in the sector. In addition, high tariffs are often combined with additional taxes and frequently changing non-tariff barriers.

Creating an environment, in which traders worldwide will face substantially the same market access conditions after 2005 is thus the EU's main objective. The Community thus thinks that in the process of integration under the ATC Members, who have so far done little to open their markets, should implement less prohibitive tariff levels, as well as remove non-tariff barriers to trade."

(c) ITCB members

541. Under the heading "Article 7 - Strengthened GATT rules and disciplines", ITCB Members offered the views and comments as follows:

"On the basis of available information, no non-compliance with any specific market-access commitments undertaken by WTO Members as a result of the Uruguay Round has been notified. We expect the TMB to bring out this important fact.

We also expect the TMB to bring out that demands for additional market-access commitments from restrained Members as a condition for full and faithful implementation of the integration process are not justified under the ATC.

On the other hand, we wish to stress that Article 7.1(c) provided that Members avoid discrimination against imports in the textile and clothing sector when taking measures for general trade policy reasons. Yet there have been several instances of singling out the sector (particularly for imports from restrained Members) in violation of this principle. In this regard, we wish to draw the TMB's attention to the following:

(i) The EU's declared policy to 'keep the possibility of using existing quotas as a bargaining chip to obtain better market access in third [restrained] countries'.

(ii) The US action to defer the integration of so-called most sensitive products until the end of the transition period.

(iii) US changes in its rules of origin involving only textile and clothing products.

We also wish the TMB to note the anti-dumping actions on imports of textile and clothing products from countries whose exports of these products were already under severe quota restriction. While we recognize the right to anti-dumping actions, we wish to emphasize that the targeting of restrained products has had the effect of causing double jeopardy to the exporting countries concerned and of impairing their right to utilize access under the Agreement.

In this regard, the TMB might already be aware of three anti-dumping measures by the EU involving bed linen, one of which, adopted on similar basis, has since been found to be illegal by the Appellate Body. In addition, although withdrawn without imposition of definitive duties, EU measures involving cotton fabrics also nevertheless caused substantial impairment of benefits accruing to the restrained exporting countries concerned. Finally the

TMB report should note the anti-dumping and countervailing duty measures which the US decided to maintain on cotton shop towels from three exporting countries.

In substance, the discriminatory singling out of textile and clothing products for general trade policy reasons, together with anti-dumping and countervailing duty measures, has had obvious negative bearing on the balance of rights of restrained countries on the one hand and the implementation of the ATC on the other. We hope the TMB report would incorporate this in its assessment."

(d) Japan

542. In its communication Japan stated that it had "levied definitive duties on Pakistani cotton yarn of 20-21 count in August 1995. Several duty rates for new suppliers were conducted in March 1996, May 1998, and new dumping margins have been notified to the WTO. The measures were revoked in July 2000 (G/ADP/N/72/JPN)".

(e) Turkey

543. Turkey's response contained the following in relation to Article 7.1, with special regard to Article 7.2:

"The most considerable improvement made by Turkey in terms of facilitating market access for textile and clothing products is, its putting into effect, for the products in question, the customs tariffs that is equivalent to the Common Customs Tariffs of the EU, as a result of the Turkish - EU Customs Union which had entered into force by 1 January 1996. The protection obtained by these tariffs are highly below the official applicable rates and the rates consolidated to GATT. As much as the quantitative restrictions which came into effect after the Customs Union are concerned, the quota increases are implemented in accordance with the growth rates in accordance with the provisions of ATC. The products subject to quota are also being integrated into GATT according to the integration schedule and in harmony with the EU.

The practices regarding anti-dumping and countervailing duty are performed in compliance with the GATT rules. A list is also enclosed which contains detailed information concerning the textile products and countries subject to measures in form of definitive anti-dumping duties, and the dumping investigations that are still continued."

544. The list referred to in the submission of Turkey is reproduced in Table 14.

Table 14
TURKEY

The Items on Which Definitive Measures in Form of Anti-Dumping Duty are Being Applied					
Customs Tariffs and Statistical Positions	Item Definition	Country	Communiqué No.	Date and No. of the Turkish Official Gazette Containing the Definitive Measure	Rate/Amount of Anti-dumping Duty
5503.20.00.00.00	Polyester Fiber	Rep. of Belarus* South Korea Indonesia	98/3 2000/2 2000/2	29.05.1998//23356 13.03.2000/23992 13.03.2000/23992	19% 11.9% - 24.6% 6.2% - 37.4%
5402.33	Texturized Polyester Yarns	India Taiwan South Korea	2000/7 2000/7	27.06.2000/24092 28.06.2000/24093	6.8% - 20.3% 9.9% - 28.6% 33.70%
5402.43	Polyester Spun Yarns	South Korea	99/7	30.11.1999/23892m	0% - 21.2%
55.13 55.14 55.15 55.16	Woven Textiles made of Synthetic or Man-made Staple Fibers	People's Republic of China	2001/2	15.02.2001/24319	87%

Continuing Dumping Investigations				
Customs Tariffs and Statistical Positions	Item Definition	Country	Communiqué No.	Date and No. of the Turkish Official Gazette Containing the Initiation of Investigation Process
54.07	Woven Textiles made of Synthetic Filament	South Korea People's Rep. of China Malaysia Thailand Taiwan	2000/9	01.11.2000/24217

*Put into effect as consequence of the Reviewing Investigation.

(f) United States

545. Under the heading "Market Access", the communication of the United States stated the following:

> "During the second stage of the ATC integration schedule, the United States continued to emphasize the importance of ensuring that all aspects of the ATC are faithfully implemented on schedule. As in the first stage of integration, it is clear that more work needs to be done in the market access area. Despite commitments to take the necessary steps under the WTO agreements to achieve market access for all Members, certain Members continue to maintain closed markets.
>
> We have a number of concerns about measures taken by exporting Members to protect their domestic textile and apparel markets. During the second stage, the United States initiated WTO dispute settlement proceedings against illegal import prohibitions on consumer goods (primarily textiles), and prevailed in that case through the Appellate Body. The United States will continue to closely monitor implementation of commitments to dismantle these prohibitions. In addition, the United States pursued and reached a mutually satisfactory resolution concerning the establishment and notification of WTO tariff bindings on a wide range of textile and apparel products of importance to US exporters, and again, the US will closely monitor implementation of this agreement. Further, we participated in a WTO dispute settlement case against discriminatory import financing requirements, and have initiated new cases where we believe customs valuation violations exist, and we are continuing to monitor other countries' practices in this regard.

Numerous other measures also affect the conditions for access to exporting Member markets. So-called 'temporary' tariff increases were introduced and kept in place for two years in one country. Another exporting country has insisted on keeping import bans in place, and has established Customs procedures to, at a minimum, impede and deter imports that are not prohibited outright. In addition, we have raised a number of specific concerns in the WTO Committee on Customs Valuation and on Subsidies and Countervailing Measures. We have also noted concerns regarding lack of access to markets in the Trade Policy Review of various Members, and we have very serious concerns about at least one other Member attempting to abrogate its Balance-of-Payments commitments to eliminate their prohibitions on textile and apparel imports.

US industry has also raised a series of concerns regarding a number of other measures that are being used to impede access to the markets of exporting countries. These measures include: additional import taxes and charges, some of which may be forgiven for goods destined for the export market, excessive and impractical marking and labelling requirements, reference pricing and non-automatic licensing, burdensome certificates of origin requirements, and pre-shipment inspection requirements.

Ironically, some of the Members with the most protected internal markets are also the most significant beneficiaries of the ATC's quota liberalization and elimination provisions, as applied by the United States. The United States will continue its efforts to work within the WTO and with our trading partners in the third stage of the ATC integration schedule to ensure that all countries meet their WTO obligations to open their market to textile and apparel products.

Finally, the United States also took the initiative, in the context of WTO accession negotiations, to seek to negotiate a general framework of relative harmonization of textile tariffs, so as to establish a growing textile trading network of countries that are open for expanding textile and apparel trade. As we move forward to the third stage of integration, we hope that other Members also seek to serve as a model for countries joining the WTO, in the area of textile and apparel market-access commitments."

3. Additional Communications Received by the TMB

546. Since the contents of the communications received from the European Community and the United States, on the one hand, and from the ITCB Members on the other, were very much different and appeared to contradict each other on a number of aspects, the TMB decided to transmit the respective parts of the communications to the other parties and requested information and comments regarding the issues raised in the respective communications. The European Community, the ITCB Members and the United States availed themselves with this opportunity and provided further comments to the TMB, which are reproduced in the following paragraphs.

(a) European Community

547. The additional comments of the European Community contained the following:

"The EC has not made it’s ATC integration process conditional on the fulfilment of demands for additional market access.

The EC has fully complied with its ATC obligations relating to integration and a considerable degree of liberalisation will result from its integration programme to date, in particular from the third stage where quotas on gloves, underwear, anoraks, nightwear, skirts, a number of woven fabric categories, baby clothes and tracksuits will all be eliminated by integration.

The EC considers that Article 7 of the ATC is an important part of the ATC. In particular Article 7(1)(a) represents a positive, self-standing obligation and not merely a reminder that obligations exist in other domains. As the TMB is aware, it states:

> '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 ***… achieve improved access to markets for textiles and clothing products through such actions as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and the facilitation of customs, administrative and licensing formalities.'*** (emphasis supplied)

The EC has consistently pointed out that, in addition to the ongoing liberalisation resulting from the ATC, by 2005 it will apply no quotas under the ATC, will have a very liberal import regime and will apply low tariffs. However, for some other WTO Members access to their markets is highly restricted by high tariffs and/or non-tariff barriers. It appears likely that this same degree of highly restricted access to their markets will barely change throughout the ten-year period of the ATC.

As a result of these difficulties the EC, at the same time as it adopted the third stage of integration, also set up a framework allowing for bilateral negotiations on market access going beyond the liberalisation and improvement arising from the EC's ATC commitments. Thus, the EC is prepared to examine the possibility of improving access to its market for textile and clothing products going beyond the European Community's full compliance under the ATC where WTO Members subject to quota are prepared to consider their own position in this regard. The EC has not made any demands of WTO Members but it has explained to them the nature of this framework for possible discussion.

To date, the EC has entered into a Memorandum of Understanding with one WTO Member, Sri Lanka, concerning market access in the textiles and clothing sector. This involves 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 EC considers that its agreement with Sri Lanka is not covered by the requirements of Article 2(15) of the ATC.

The EC is engaged in active negotiation with a number of other WTO partners creating the potential for further agreements of a similar kind and hopes thus to contribute to further improving market access in the sector in advance of 2005. In this respect, the EC would like to emphasise that Article 2.15 of the ATC explicitly acknowledges the right of Members to eliminate restrictions towards individual countries during the integration phase. This deviation from Article I of the GATT 1994 ensures that such additional liberalisation of trade in textiles is not *de facto* inhibited by the application of the general MFN principle.

[…]

The EC's overall policy, as outlined above, has favoured trade and provided the potential for improved access, which has been taken up by a number of exporting countries as is shown above. The EC has not taken any action to provide additional access going beyond the above in regard to the United States and/or Canada."

(b) ITCB members

548. The additional comments received from ITCB Members were as follows:

> "With respect to the issue of market access, we wish to emphasize that developing countries have implemented all specific commitments undertaken as a result of the Uruguay Round. In this regard, it may be interesting to quote from the European Commission's own report dated 12 July 2000 to the EC Council pursuant to Council Regulation 3030/93. The Commission stated, *inter alia*, that 'Article 7 underlines the need to achieve improved market access generally' and that 'in the specific context of Article 7 of the ATC, most WTO Members are generally complying with their specific commitments and with the relevant GATT 1994 rules and disciplines'.
>
> Aside from the above, the EU and US submissions […] do not reveal in any manner if they themselves took any action to provide additional access to their markets. On the contrary, as pointed out in our [previous] submission, a number of actions have been adopted by them which have had a negative bearing on the balance of rights otherwise accruing to restrained Members under the ATC. In this connection, we wish to reiterate our concerns regarding, among other things, the singling out of textile and clothing products for general trade policy reasons, such as for changes in rules or origin, using quotas as a bargaining chip for demanding increased access in developing countries, etc., contrary to Article 7.1(c), and the targeting of restrained products for repeated and unjustified anti-dumping actions contrary to Article 7.1(b)."

(c) United States

549. The additional comments received from the United States were as follows:

> "First, while the point made by the ITCB is true as far as it goes, it cannot be concluded from the lack of notifications under Article 7 that there is no problem with compliance with market access commitments under WTO Agreements. Indeed, the United States has made one of its most important priorities the enforcement of textile market access commitments, and we have included information on several relevant initiatives in our submission. We have taken note of the ITCB's comment regarding an additional notification under Article 7 and will review our position on the merits of this suggestion. As to the second comment, we are unaware of any demands for additional market access commitments from restrained Members as a condition for the implementation of the ATC. However, the ATC itself in Article 7 strongly encourages additional market opening efforts, and to the extent that requests may be made in connection with demands by restrained Members for additional access over and above the scheduled ATC liberalization, that would seem entirely appropriate and fully within the scope of the Agreement".

E. COMMENTS OF THE TMB WITH RESPECT TO THE IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 7. ADDITIONAL OBSERVATIONS IN RELATION TO SOME OF THE ISSUES RAISED BY MEMBERS IN THEIR RESPECTIVE RESPONSES TO THE TMB'S REQUEST FOR INFORMATION

550. Though, as reflected in other chapters of this report, the information and comments received from Members in response to the TMB's request contain a number of differing and, in most respects, opposing views and assessments, this applies even more to the comments and assessments provided in relation to the matters raised in the context of the implementation of Article 7. Independent of the substance of the information provided, each of the responses received, with the exception of one (United States), contains some indications or views regarding the implementation of some of the issues covered by Article 7 by the Member(s) submitting such contributions. At the same time, three of the contributions received (European Community; ITCB members; United States) put clearly in the

forefront claims of problems experienced by them and non-compliance by others with some of the important provisions of Article 7.

1. Some Remarks Related to the Obligations Incorporated into Article 7

551. The TMB recalled that Article 7.2 contains the obligation applicable to all Members to notify to the TMB the actions referred to in Article 7.1 "***which have a bearing on the implementation of this Agreement***" (emphasis added). In addition, "[i]t shall be open to any Member to make reverse notifications to the TMB." Article 7.3 provides the possibility for bringing matters before the relevant WTO bodies and informing the TMB. Against this background, it is important to reiterate that, during the second stage of the integration process, the TMB received only two communications which would fall under the provisions of Article 7, even though it was not specified by the Member concerned whether these communications had been made with reference to Article 7.2 or Article 7.3. The same background should be recalled also, when assessing the relatively detailed and, in most respects, differing comments and replies provided by some Members in response to the TMB's request made in the context of the preparation of the present report. It should be noted 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.

552. The only specific task conferred to the TMB under Article 7 is contained in the last sentence of Article 7.3, stating that "[a]ny subsequent findings or conclusions by the [relevant] WTO bodies concerned [with respect to matters brought before them by WTO Members] shall form part of the TMB's comprehensive report". Even if this were to be read in conjunction with the broad mandate defined for the TMB in Article 8.1, the TMB has come to the view that it is neither required under the ATC, nor is it a reasonable expectation to take up and address, in substance, each and every comment included in the responses received from Members. The TMB is of the view that it has already made a contribution pursuant to Article 8.11 to the Members' consideration of these matters by inviting Members to offer information and comments and by faithfully reflecting their replies in paragraphs 539 to 549.

553. Notwithstanding the above, the TMB has decided to offer some comments and observations, 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.

554. The first observation of the TMB is related to the perception one might get regarding Members' reading of the obligations incorporated into the provisions of Article 7.1. Some of the comments and replies received from Members appear to emphasize or to give particular importance to certain portions or elements of the language of Article 7.1, while more or less ignoring some other elements also forming part of the language of this Article. The TMB is of the view that the language of Article 7.1 should be read in its entirety, including the context in which the obligations thereunder are defined, the relevant obligations themselves and the objectives they are designed to accomplish,

together with the confirmation that "[s]uch actions [referred to in the introductory sentence of Article 7.1] shall be without prejudice to the rights and obligations of Members under GATT 1994".

2. Implementation of the Provisions of Article 7.1(a) (Market Access)

555. 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 formal 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, the Body agrees with the statement made by ITCB members according to which "[o]n the basis of available information, no non-compliance with any specific market-access commitments undertaken by WTO Members as a result of the Uruguay Round has been notified". However, Article 7.1 speaks of "specific commitments" which appear to be a somewhat broader notion than specific market-access commitments. In addition, the reference to these specific commitments is perhaps a central, but not the only element included in the provisions of Article 7.1(a), if the Chapeau of Article 7.1 and the language of sub-paragraph (a) were to be considered together. Furthermore, the TMB is not in a position to assess whether the two communications received from the United States (requesting consultations, respectively, with Brazil and Romania) also involved aspects related to specific (market-access) commitments.

556. 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 have been brought to its attention. This statement notwithstanding, relying on notifications addressed to the Committee on Market Access, it would appear that, at least in two cases, in the area of rectifications and modifications of schedules, some issues involving essentially textile and clothing products were raised and subsequently resolved as a result of consultations held and agreements reached between the Members concerned. In one case, in December 1999, India notified rectifications and modifications to its schedule, apparently incorporating the arrangements reached with the European Community and the United States at the end of the Uruguay Round in the area of market access for textiles. Subsequently, in October 2000, India submitted a revision of this notification, reflecting the agreements reached in consultations with the two Members concerned.[184] The other case involved Pakistan's notification, in October 1999, of its tariff commitments undertaken in an agreement on market access for textile products reached with the European Community in March 1996. A corrigendum to this notification was issued in May 2000.[185] The TMB observed that in both cases these notifications had not been referred to the TMB as envisaged in Article 7.2.

557. Developments with respect to restrictions notified under Article XVIII of GATT 1994, which can also have relevance in considering the implementation of Article 7.1(a), are reported in detail in Chapter V of this report.[186] It should also be mentioned that during the period covering the second stage implementation, a few Members (Bulgaria; Romania; Slovak Republic) introduced or continued to apply temporary import surcharges affecting, *inter alia*, textile and clothing products with reference to the provisions of Article XII of GATT 1994. All these measures which were gradually phased out, had been examined by the Committee on Balance-of Payments Restrictions.

558. The TMB noted that almost all the responses received from Members included a number of comments related to tariffs. It would appear that it is up to the WTO Members to discuss them, if they so wish, while conducting the major review in the CTG. In this context a number of issues can be considered, among others, such as:

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[184] See G/MA/TAR/RS/63 and Rev.1.
[185] See G/MA/TAR/RS/61 and Corr.1.
[186] See paragraphs 346 to 350 and paragraph 377.

- whether it is justified to claim that significant reductions in tariff levels represent considerable improvements in terms of facilitating market access at this stage, particularly in cases where reductions had been accompanied by the introduction of new restrictions affecting imports from several Members (and, in a particular case, the DSB found these restrictions to be inconsistent with the provisions invoked);

- whether it is appropriate at this stage to suggest a comparison between one's low tariffs and, in particular, the absence of non-tariff barriers with high tariff rates applied by others, when an important number of restrictions notified under Article 2.1 will not, in all likelihood, be eliminated before the expiration of the ATC transitional period, or whether it is appropriate to refer to the situation when those restrictions are removed in 2005;

- whether, in the context of Article 7.1(a), there are arguments for reducing high tariff rates, if these rates are within the specific commitments made by the respective Members as a result of the Uruguay Round, without reference to any change in market access;

- whether there is also a need to compare, within a Member's tariff structure and schedule of concessions, the level of the rates applicable to textile and clothing products as opposed to that applied to products of other industrial sectors;

- what does the notion of relative harmonization of textile tariffs mean and which is the most appropriate general framework for harmonization of the respective tariff rates.

559. As regards other measures listed in Article 7.1(a), some developing countries continued to use a reference price or a minimum price system, often affecting imports of textile and clothing products. It is the understanding of the TMB that all such requests (of delaying the application of certain provisions of the Agreement on the Application of Article VII of GATT 1994) were referred to the Committee on Customs Valuation or were covered by waivers granted by higher WTO bodies. The TMB is also aware that a number of Members provided notifications to the Committee on Import Licensing of their respective licensing procedures which also covered textile and clothing products. During the second stage of the integration process, 17 notifications were addressed to the Committee on Technical Barriers for Trade affecting (also) textile and clothing products (mostly labelling requirements or standards). Three such notifications were submitted by Slovenia, two by the United States and one, respectively, by Australia; Belgium; Brazil; Czech Republic; European Community; Egypt; El Salvador; Jamaica; Korea; Latvia; Netherlands and Spain. The TMB is of the view that Members should decide whether to reflect further, and if so, in what manner, on matters related to facilitation of customs, administrative and licensing formalities. Such further reflection can also include some relevant aspects covered in other chapters of this report, such as visa arrangements and rules of origin.

3. Other Issues Raised by Members in the Context of the Provisions of Article 7.1(a)

560. As indicated earlier[187], the ITCB members expressed concern that demands for additional market-access commitments from restrained Members as a condition for full and faithful implementation of the integration are not justified under the ATC.

561. The TMB recalled that, in its additional comments[188], the European Community had provided detailed explanation as well as information regarding the fact that "at the same time as it adopted the third stage of integration, [it] also set up a framework allowing for bilateral negotiations on market

[187] See paragraph 541.
[188] See paragraph 547.

access going beyond the liberalisation and improvement arising from the EC's ATC commitments. Thus, the EC is prepared to examine the possibility of improving access to its market for textile and clothing products going beyond the European Community's full compliance under the ATC where WTO Members subject to quota are prepared to consider their own position in this regard. The EC has not made any demands of WTO Members but it has explained to them the nature of this framework for possible discussion".

562. The TMB further recalled that the United States, in its additional comments[189], had stated, *inter alia*, that "the ATC itself in Article 7 strongly encourages additional market opening efforts, and to the extent that requests may be made in connection with demands by restrained Members for additional access over and above the scheduled ATC liberalization, that would seem entirely appropriate and fully within the scope of the Agreement".

563. The TMB noted, however, that the European Community, in the same additional comments, had stated that the European Community had not made its ATC integration process conditional on the fulfilment of demands for additional market access.[190] Furthermore, the United States also stated that it was "unaware of any demands for additional market access commitments from restrained Members as a condition for the implementation of the ATC".[191]

564. The TMB took note of the statements reflected in paragraph 563.

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

565. The TMB recalled that the comments from the ITCB members had requested the TMB to note, *inter alia*, that:

> "anti-dumping actions on imports of textile and clothing products from countries whose exports of these products were already under severe quota restriction. While we recognize the right to anti-dumping actions, we wish to emphasize that the targeting of restrained products has had the effect of causing double jeopardy to the exporting countries concerned and of impairing their right to utilize access under the Agreement.
>
> In this regard, the TMB might already be aware of three anti-dumping measures by the EU involving bed linen, one of which, adopted on similar basis, has since been found to be illegal by the Appellate Body. In addition, although withdrawn without imposition of definitive duties, EU measures involving cotton fabrics also nevertheless caused substantial impairment of benefits accruing to the restrained exporting countries concerned. Finally the TMB report should note the anti-dumping and countervailing duty measures which the US decided to maintain on cotton shop towels from three exporting countries."[192]

The Body also recalled that the submission of the United States had stated, *inter alia*, that the United States had raised a number of specific concerns, among others, in the Committee on Subsidies and Countervailing Measures.[193]

566. The TMB is aware that, in September 1998, India requested the establishment of a dispute settlement panel on the anti-dumping duties levied by the European Community on imports of cotton-type bedlinen from India. The request was related to Commission Regulation (EC) N° 2398/97 of 28 November 1997 on imports of cotton-type bed-linen from India. India asserted that the European Community had initiated anti-dumping proceedings against the import of cotton- type bed-

[189] See paragraph 549.
[190] See paragraph 547.
[191] See paragraph 549.
[192] See paragraph 541.
[193] See paragraph 545.

linen from India by publishing a notice of initiation in September 1996. Provisional anti-dumping duties were imposed by EC Commission Regulation N° 1069/97 of 12 June 1997. This was followed by the imposition of final duties in accordance with the above-mentioned EC Council Regulation of 28 November 1997. India contended that the determination of standing, the initiation, the determination of dumping and injury as well as the explanations of the EC authorities' findings were inconsistent with WTO law. India was also of the view that EC authorities' establishment of the facts was not proper and that the EC's evaluation of facts was not unbiased and objective. India also contended that the European Community had not taken into account the special situation of India as a developing country. India alleged violations of Articles 2.2.2, 3.1, 3.2, 3.4, 3.5, 5.2, 5.3, 5.4, 5.8, 6, 12.2.2, and 15 of the Anti-Dumping Agreement, and Articles I and VI of the GATT 1994. At its meeting on 27 October 1999, the DSB established a panel. Egypt; Japan and the United States reserved their third-party rights. The Panel Report was circulated on 30 October 2000. The Panel concluded that the European Community did not act inconsistently with its obligations under Articles 2.2, 2.2.2, 3.1, 3.4, 3.5, 5.3, 5.4, and 12.2.2 of the Anti-Dumping Agreement in: (a) calculating the amount for profit in constructing normal value; (b) considering all imports from India (and Egypt and Pakistan) as dumped in the analysis of injury caused by dumped imports; (c) considering information for producers comprising the domestic industry but not among the sampled producers in analyzing the state of the industry; (d) examining the accuracy and adequacy of the evidence prior to initiation; (e) establishing industry support for the application; and (f) providing public notice of its final determination. The Panel, however, also concluded that the European Community acted inconsistently with its obligations under Articles 2.4.2, 3.4, and 15 of the Anti-Dumping Agreement in: (a) determining the existence of margins of dumping on the basis of a methodology incorporating the practice of zeroing; (b) failing to evaluate all relevant factors having a bearing on the state of the domestic industry, and specifically all the factors set forth in Article 3.4; (c) considering information for producers not part of the domestic industry as defined by the investigating authority in analyzing the state of the industry; and (d) failing to explore possibilities of constructive remedies before applying anti-dumping duties. On 1 December 2000, the European Community notified the DSB of its intention to appeal certain issues of law covered in the Panel Report and legal interpretations developed by the Panel. The Appellate Body circulated its report on 1 March 2001. The Appellate Body (1) upheld the finding of the Panel that the practice of "zeroing" when establishing "the existence of margins of dumping", as applied by the European Community in the anti-dumping investigation at issue in this dispute, was inconsistent with Article 2.4.2 of the Anti-Dumping Agreement; and (2) reversed the findings of the Panel that: (a) 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 (b) 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; and (3), as a consequence, concluded that the European Community, 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. At its meeting of 12 March 2001, the DSB adopted the Panel report, as modified by the Appellate Body report.

567. In August 1998, India also requested consultations with the European Community in respect of alleged repeated recourse by the European Community to anti-dumping actions on unbleached cotton fabrics, from India. India considered, in the light of the information which had become available before and after the adoption of Regulation 773/98, that the determination of standing, the initiation, the selection of the sample, the determination of dumping and the injury were inconsistent with the EC's WTO obligations. India was also of the view that EC's establishment of the facts had not been proper and that EC's evaluation of facts was not unbiased and objective. India also contended that European Community had not taken into account the special situation of India as a developing country. India alleged violations of Articles 2.2.1, 2.4.1, 2.4.2, 2.6, 3.3, 3.2, 3.4, 3.5, 4.1(I), 5.2, 5.3, 5.4, 5.5, 5.8, 6.10, 7.1(I), 7.4, 9.1, 9.2, 12.1, 12.2 and 15 of the Anti-Dumping Agreement, and Articles I and VI of GATT 1994. India also alleged nullification and impairment of

benefits accruing to it under the cited agreements. To the TMB's knowledge, this request was not followed by a formal request for the establishment of a panel, since the European Community decided not to impose definitive anti-dumping duties on imports of these products.

568. It should be noted as well that, during the recent past, several Members initiated anti-dumping investigations on imports of certain textile products from other Members, in a number of cases leading to the imposition of provisional and/or definitive anti-dumping duties. Table 15 provides an illustrative summary of actions initiated in 1998, 1999 and 2000, based on documents circulated by the Committee on Anti-dumping Practices.

Table 15

Anti-dumping Proceedings Initiated in 1998, 1999 and 2000*

Initiating Members	Members Affected	Product Description	Date of		
			Initiation	Provisional Measures	Definitive Measures
Argentina	Korea	Woven fabric of nylon or polyamide	22.06.99	25.01.00	22.06.00
	Korea	Fabrics of acetate filament	2.12.99	23.11.00	
	Chile	Fabrics of polypropylene	21.11.00		
	Brazil	Denim fabrics	29.04.99	No dumping found: 01.11.00	
Australia	Belgium} Colombia} United Kingdom} United States}	Woven polypropylene carpet backing fabric	09.07.98	09.12.98	28.01.99
Brazil	Korea	Nylon yarn	12.01.00	No final measure: 11.12.00	
European Community	Czech. Rep.} Hungary} Poland}	Binder and baler twine	28.02.98	02.10.98	20.03.99
	India} Korea}	Polyester textured filaments yarn	21.08.98	-	16.06.99 (No final)
	Australia} Indonesia} Thailand}	Polyester staple fibre	22.04.99	21.01.00	14.07.00
	India} Korea}	Polyester staple fibre	21.12.99 07.10.99	06.07.00 06.07.00	28.12.00 28.12.00 (Korea: undertaking)
India	Italy} Japan} Portugal} Spain} Mexico}	Acrylic fibres	07.01.98 30.07.98	17.11.98 -	22.01.99 16.07.99
	Indonesia} Korea} Thailand}	Polyester staple fibre	25.01.99	27.09.99	21.01.00
	Indonesia} Korea} Thailand}	Nylon cord fabric	26.02.99	05.10.99	22.02.00
	EC}	Acrylic fibre	{26.03.99		

Initiating Members	Members Affected	Product Description	Date of		
			Initiation	Provisional Measures	Definitive Measures
India (cont'd)	Hungary} Turkey}		{28.07.99 {26.03.99	13.10.99 13.10.99	No final 24.03.00
Israel	Mexico} United States}	Denim	02.02.98	-	21.03.99 (No final)
Mexico	Korea Peru} Spain} Turkey}	Textile polyester filament Acrylic fibre	21.12.99 19.04.00	03.10.00	
South Africa	Hong Kong, China} India} Korea} Turkey} Malawi} Pakistan}	Blankets Bedlinen	08.04.98 17.12.99	18.12.98 10.11.00	18.06.99
Trinidad and Tobago	India	Polypropylene rope	11.05.99	22.02.00	
Turkey	Korea India} Korea} Thailand} Indonesia} Korea}	Polyester yarn (mm staple fibre) Polyester textured yarn Polyester synthetic staple fibre	27.11.98 04.03.99 04.03.99	-	30.11.99 27.06.00 13.03.00
United States	Korea	Certain polyester staple fibre	29.04.99	08.11.99	25.05.00

*Source: WTO Database.

569. The TMB observed that it could not identify those specific concerns which, according the United States, had been raised by that Member, presumably in relation to programmes and/or actions affecting textile and clothing products from the reports adopted by the Committee on Subsidies and Countervailing Measures.

570. The 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. In their comments, the ITCB members also "recognize the right to antidumping-actions". Also, as reflected in Table 15, a number of WTO Members applied such measures in the recent past. At the same time, the 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.

5. Implementation of the Provisions of Article 7.1(c)

571. The TMB recalled that in the view of the ITCB members, there had been several instances of singling out the textiles sector when taking measures for general trade policy reasons and, therefore, these actions violated the principle laid down in Article 7.1(c). In this regard the following cases were cited by the ITCB members:

"(i) The EU's declared policy to 'keep the possibility of using existing quotas as a bargaining chip to obtain better market access in third [restrained] countries'.

(ii) The US action to defer the integration of so-called most sensitive products until the end of the transition period.

(iii) US changes in its rules of origin involving only textile and clothing products." [194]

572. In reflecting on these comments, the TMB recalled that Article 7.1(c) spoke of "[avoidance of] discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons". The TMB is of the view that a typical example of violation of the provisions of Article 7.1(c) would be if a Member were to introduce restrictive measures for general trade policy reasons (for example pursuant to Articles XII or XVIII of GATT 1994 for balance-of-payment considerations) which would only or mainly affect textile and clothing items, while other products would be excluded from the scope of application. While it is evident that ITCB members have concerns with respect to the substantive aspects of each of the issues listed above, the TMB considered that, in particular, the first two matters raised would hardly amount to a discriminatory singling out of ATC products for general trade policy reasons. In any case, all the three issues mentioned by ITCB members are addressed by the TMB in the relevant chapters of the present report.

X. IMPLEMENTATION OF PROVISIONS IN THE ATC RELATED TO SPECIAL INTERESTS OR PARTICULAR SITUATIONS OF CERTAIN WTO MEMBERS

A. LEAST-DEVELOPED COUNTRY MEMBERS

573. 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.

574. As to the implementation of the provisions detailed in paragraph 573, the following observations can be made:

[194] See paragraph 541.

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

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

2. Article 2.18

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

- Canada notified restrictions on imports from Bangladesh; Lesotho and Myanmar. Improvement in access in the sense of Article 2.18 was provided with respect to exports from Lesotho and Myanmar through the advancement by one stage, both during Stages 1 and 2, of the growth rates set out in Articles 2.13 and 2.14(a);

- the United States notified restrictions on imports from Bangladesh; Haiti and Myanmar. Improvement in access in the sense of Article 2.18 was provided with respect to exports from Haiti through the advancement by one stage, both during Stages 1 and 2, of the growth rates set out in Articles 2.13 and 2.14(a).[195]

577. In reply to the TMB's request for information and comments made in the context of the preparation of the present report, the ITCB members 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".

578. Canada, in its reply to the TMB's request for information and comments, 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. At the same time, at the onset of the ATC, Canada decided to expand the small suppliers provision to cover more exporters by applying Article 2.18 to the exporters who qualified in either 1991 or 1994, thereby taking into account exporters who entered the Canadian market after 1991 and before 1995. This allowed six more suppliers to benefit from the advancement of the growth rate provision. 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), Macau, 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, Macau, Myanmar, Poland, South Africa, Sri Lanka and Swaziland). In the latter case, Canada provided further market opportunities for these

[195] See paragraphs 285, 286 and 290.

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".

579. The European Community, in its reply to the TMB's request for information and comments, stated, that "in so far as least-developed country Members are concerned, the European Community 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 Community from LLDCs 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".

580. Japan, in its reply to the TMB's request for information and comments, 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 (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".

B. SMALL SUPPLIERS AND NEW ENTRANTS IN THE FIELD OF TEXTILES AND CLOTHING TRADE

581. Article 2.18 of the ATC is primarily intended to provide improvement in access to exports of a specific group of countries, as defined in the Article itself (i.e. Members whose restrictions represent 1.2 per cent or less of the total volume of the restrictions applied by an importing Member as of 31 December 1991 and notified under Article 2).[196]

582. Article 6.6(b) provides that, if a safeguard measure is taken on imports from Members whose total volume of textile and clothing exports is small in comparison with the total volume of exports of other Members and who account for only a small percentage of total imports of that product into the importing Member, differential and more favourable treatment shall be accorded in fixing the level of the restraint, its growth rate and the applicable flexibility provisions. The Members corresponding to this definition are not necessarily the same as the Members envisaged in Article 2.18. The TMB received no information as to whether or not the Members with respect to which the United States, Colombia and Argentina had introduced restrictions under Article 6 fell within the definition in Article 6.6(b), and whether, consequently, the provisions of Article 6.6(b) had been taken into account. It would appear, however, that during Stage 2 the measure taken by the United States under Article 6 did not affect a Member defined in Article 6.6(b), and that this seemed also to be the case with respect to the measures taken by Argentina and Colombia.

C. SPECIAL TREATMENT AFFORDED TO MEMBERS WHICH HAVE NOT ACCEPTED THE MULTIFIBRE ARRANGEMENT (MFA) EXTENSION PROTOCOL SINCE 1986

583. 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 it had been the case for its first comprehensive report, the TMB received no information on the extent to which recourse was made to this provision of the ATC. It can be noted, however, that consultations were requested, pursuant to Article 6.7, in two cases against imports of Members falling under Article 1.3,

[196] For the implementation of Article 2.18, see paragraphs 283 to 295.

i.e. on imports of denim fabric into Colombia from both Chile and Venezuela, but that in both cases no safeguard measure was introduced.

D. COTTON-PRODUCING EXPORTING MEMBERS

584. 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 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".[197]

585. In their reply to the TMB's request for information and notification made in the context of the preparation of the present report, the ITCB members 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".

586. Canada, in its reply to the TMB's request for information and comments, 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".

587. The European Community, in its reply to the TMB's request for information and comments, 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 integration, by specifically offering consultations with all exporting WTO Members against which it maintained restrictions."

588. The United States, in its reply to the TMB's request for information and comments, 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".

[197] See G/L/179, paragraphs 313 to 316.

E. WOOL-PRODUCING EXPORTING MEMBERS

589. 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 2, as had been the case during Stage 1, affecting exports of wool products. This provision has, therefore, not been applied.

F. MORE FAVOURABLE TREATMENT TO BE ACCORDED TO RE-IMPORTS IN APPLYING THE TRANSITIONAL SAFEGUARD MECHANISM

590. Article 6.6(d) states that "more favourable treatment shall be accorded to re-imports by a Member of textile and clothing products which that Member has exported to another Member for processing and subsequent reimportation, as defined by the laws and practices of the importing Member, and subject to satisfactory control and certification procedures, when these products are imported from a Member for which this type of trade represents a significant proportion of its total exports of textiles and clothing". Contrary to what had been the case during Stage 1[198], 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. This provision has, therefore, not been applied with respect to the transitional safeguard measures taken during Stage 2.

G. TREATMENT ACCORDED TO DEVELOPING COUNTRY MEMBERS

591. 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 can 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

592. 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.

2. Other Provisions Which Could be Applied in Such a Way as to Provide Favourable Treatment, *inter alia*, to Developing Country Members

593. 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) were mostly developing countries/territories.

594. In its first comprehensive report, adopted pursuant to Article 8.11, 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

[198] See G/L/179, paragraphs 319 and 320.

in addition to the Articles already mentioned in this Chapter, there are several other provisions in the ATC which, although not specifically applicable only to such Members, could be applied in such a way as to provide favourable treatment, or to be beneficial, *inter alia*, to them. Such provisions include, among others, those related to the integration process (Articles 2.6, 2.7. 2.8 and 2.10), provisions regarding growth rates (Articles 2.13 and 2.14), elimination of quantitative restrictions (Article 2.15), phasing out of non-MFA restrictions (Article 3.2), changes (i.e. reductions) in existing restrictions (Article 3.3), improved access to markets and the application of policies relating to fair and equitable trading conditions (Article 7.1)".[199]

H. CONCLUSIONS ADOPTED BY THE CTG IN FEBRUARY 1998 IN ITS FIRST MAJOR REVIEW

595. The conclusions of the major review of the implementation of the ATC in the first stage of the implementation process, as adopted by the CTG, contain, *inter alia*, the following[200]:

1. Least-Developed Country Members

> "48. With respect to the treatment of the least-developed country Members, some Members pointed out that certain least-developed countries had benefited 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 Members 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 benefited 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."

2. Small Suppliers and New Entrants in the Field of Textiles and Clothing Trade

The relevant portion of the conclusions adopted by the CTG in February 1998 in its first major review are reproduced in paragraph 292.

3. Cotton-Producing Exporting Members

> "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

[199] See G/L/179, paragraph 323.
[200] The paragraph numbers refer to G/L/224.

content; nevertheless, it remained ready to enter consultations if any other Member so wished."

4. Conclusion of the Major Review by the CTG in February 1998

"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."

I. FURTHER COMMENTS AND OBSERVATIONS BY THE TMB

596. With respect to the special treatment to be accorded to least-developed country Members, ITCB members stated that "the US and Canada failed to implement this provision consistently with its object and purpose". In this regard the TMB observes that the provisions of Article 2.18 were applied by Canada to restrictions on imports from Lesotho and Myanmar, but not to those from Bangladesh, and by the United States to restrictions on imports from Haiti, but not to those from Bangladesh and Myanmar. The TMB notes that, according to Canada, as a result of the application of the provisions of Article 2.18, *inter alia*, the annual growth rates on the restraints remaining for most small suppliers and least developed countries now exceed 9 per cent and will increase to over 12 per cent on 1 January 2002, and that the least-developed countries benefited also from the various liberalizing measures taken by Canada, as noted in paragraph 578 above. The TMB also notes that the European Community does not maintain any restrictions on the imports of products covered by the ATC from the least-developed country Members, and that no recourse to the provisions of Article 6 had been made by a WTO Member on the imports from least-developed country Members. It is also noted that the reply of the United States to the TMB's request for information and comments did not cover aspects related to the treatment provided to least-developed country Members.

597. The TMB observes that footnote 1 to Article 1.2 states that least-developed country Members may benefit, to the extent possible, from the provision of that Article by using the provisions of Article 2.18 and 6.6(b) in order to permit meaningful increases in access possibilities and the development of commercially significant trading opportunities. While noting that no Article 6 action has been taken on imports from any least-developed country Member, the TMB reiterates the particular importance of a full and faithful implementation of the provisions of the ATC in favour of least-developed country Members, and invites Members to examine the possibilities for providing, whenever possible, substantially increased market access opportunities for the textile and clothing products of the least-developed country Members. Measures that may be taken to this end would also strengthen the confidence in the multilateral trading system as embodied in the WTO Agreement.

598. As regards the particular interests of the cotton-producing exporting Members, the TMB notes the statement by ITCB members 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". The TMB also notes the statement by Canada that consultations with, *inter alia*, cotton producing exporting countries were held immediately prior to the start of the ATC and that, as a result, a number of improvements had been made to Canada's restraints in order to accommodate the cotton producing exporting Members' requests, and that since then no such Member had approached Canada with specific concerns of access for cotton products. The TMB further notes the EC's statement that it had 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 integration, by specifically offering consultations with all exporting WTO Members against which it maintained restrictions. The TMB notes similarly the US' statement that it had 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, that the United States had subsequently engaged in consultations with cotton producing countries to resolve issues raised by them and that these consultations, which had been considered successful by all participants, were also conducted having Article 1.4 in mind.

599. 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.

600. 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.

XI. OTHER ISSUES

601. This Chapter addresses the following issues:

- continuous autonomous industrial adjustment and increased competition in Members' markets in the sense of Article 1.5;
- regional arrangements and initiatives;
- elimination of restrictions on imports from certain non-WTO Members, while keeping them in place for WTO Members;
- accession of new Members.

A. AUTONOMOUS INDUSTRIAL ADJUSTMENT AND INCREASED COMPETITION IN MEMBERS' MARKETS

602. Article 1.5 states 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". While being aware that the ATC deals with this matter in the context of facilitating integration and that, therefore, autonomous industrial adjustment and the state of competition in Members' markets could also have been taken up in the Chapter of this report dealing with integration, the TMB considered that if this context were to be kept in mind, it could be equally appropriate to devote a separate section to this important subject-matter under another Chapter of the report.[201]

603. The TMB recalled that it had already stated the following in its first comprehensive report:

> "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,

[201] One main reason for this was that Chapter II of the report, dealing with the integration process, puts the primary focus on the description, analysis and assessments of the integration programmes already implemented (during Stages 1 and 2) or notified (for Stage 3).

> *inter alia*, on the implementation of Article 1.5. Only two Members [Colombia and the European Community] 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."[202]

604. In the conclusions of its first major review adopted by the CTG in February 1998, it is 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."[203]

605. Against this background and in the context of the preparation of the present comprehensive report, the TMB invited Members to submit information, *inter alia*, in relation to developments in allowing for continuous autonomous industrial adjustment and increased competition in their markets.[204]

1. Information and/or Comments Provided by WTO Members in Response to the TMB's Request

606. Five Members provided information regarding developments in allowing for continuous autonomous industrial adjustment and increased competition in their markets and, in addition, the ITCB members also offered comments in relation to this issue. All these contributions are reproduced in the paragraphs below.

(a) Canada

607. The communication received from Canada contained the following:

> "The key elements of the Agreement on Textiles and Clothing (ATC) integration process are the 10-year transition period, the three phases of integration during this transition period, and the growth provisions for restraint levels. These negotiated provisions provide the framework within the ATC for autonomous industrial adjustment to further increased import competition in the Canadian market.
>
> The Canadian textile and apparel sectors have been undergoing continuous industrial adjustment to increased import competition, including in restrained products, since the mid-1970s. At that time, the Canadian textile and apparel market was essentially supplied by domestic producers, who employed over 350,000 workers. Today, the Canadian textile and apparel sectors employ 148,000 workers (down from 179,000 workers in the late 1980s), maintains less than 50 per cent of the domestic market and, in the case of primary textiles and apparel, has shifted its focus increasingly to export markets.

[202] See G/L/179, paragraphs 74 to 77.
[203] See G/L/224, paragraphs 10, 11 and 15.
[204] G/TMB/24.

The total Canadian market for apparel has grown by an annual rate of 1.5 per cent since 1995 and now stands at an estimated $10.3 billion. Canadian producers, however, have continued to lose market share to imports since the start of the ATC, with imports increasing their market share by an estimated 18 percentage points to 59 per cent from 1994 to 2000.

Total apparel imports have increased by 71 per cent from 1994 to 2000, from $2.8 billion to $4.8 billion, with imports from developing countries rising by 79 per cent from $2.1 billion to $3.8 billion, despite the fact that the domestic market increased by less than 10 per cent during the same period. Apparel imports from developed countries grew by 30 per cent during the same period. In 1994, imports from developing countries held an estimated 31 per cent of the Canadian market as compared to 10 per cent by imports from developed country imports. In 2000, an estimated 47 per cent of the Canadian market was captured by imports from developing countries, while imports from developed countries held a 12 per cent market share.

The market access opportunities for developing countries exporting to the Canadian market has been enhanced during the ATC transition period in a number of ways. First, opportunities were enhanced by the removal of restraints, such as the elimination on 1 July 1997 of the restraints on tailor-collared shirts and, under ATC Article 2.15, the removal from restraint on 1 January 1998 of a number of apparel items, such as various women's, girls' and children's blouses and shirts, women's and girls' ensembles, rainwear and baby outwear, without adjusting the restraint levels on the remaining products. Second, as a result of the ATC provisions relating to growth rates and growth-on-growth, the level of many of Canada's restraints have increased faster than they would have otherwise under the MFA arrangements (e.g. many of Canada's MFA growth rates were 6 per cent and as a result of the ATC, increased by 57 per cent from 1995 to 2000 (70.9 per cent by 2001) as opposed to 42 per cent without the ATC during the 1995-2000 period. Third, on 1 January 1998, Canada increased unilaterally the restraint level for winter outerwear (i.e., category 2) by 10 per cent, over and above the increases specified in the ATC.

The Canadian apparel industry, on the other hand, has continued to lose market share since 1994. The industry has experienced plant closures as producers consolidated their operations and increasingly specialized their production. Employment has shrunk to 93,152 workers, down by 15.46 per cent since 1990.

While the Canadian apparel industry has traditionally not been export oriented, the Canadian industry has also adjusted by shifting its production to export markets, particularly to the USA but also to other markets such as Japan and the EU in areas such as men's and boys' apparel. Canadian apparel exports have doubled since 1994, *albeit* from a low base of $879 million. At present, exports account for nearly 40 per cent of domestic production.

The total Canadian textiles market (yarns, fabrics and made-ups) reached over $10 billion in 2000. As in the case of apparel, Canadian textile producers have had to adjust to increased import competition. There have been relatively few restraints in the Canadian textile sector, with the vast majority of yarns, fabrics and made-ups entering Canada unrestrained (based on 1990 import data). Still, the textile industry has seen its share of the domestic market fall from 59 per cent in 1994 to around 35 per cent in 2000, with imports doubling over a period of time when the domestic market grew by less than 30 per cent. The Canadian textiles industry has responded by reducing costs, increasing investment in capital-intensive production methods and shifting to export markets in specialized product areas such as industrial and home furnishing textiles.

The decline in the number of primary textiles establishments that started in the early 1980s continued, with a fall by 20 per cent since 1990. The remaining primary textiles firms have been relatively successful in increasing their competitiveness, in part through exporting to the USA and other foreign markets, in such capital intensive sectors as man-made yarns. As a result, employment, after falling by one-third during the 1980s from around 30,000 to 20,000, grew by 13.02 per cent since 1994 to reach 21,284 in 2000.

The domestic textile products industry has seen approximately one in four establishments disappear since 1990, a much higher rate than in the case of the primary textiles sector. Its largest sub-group, the carpet, mat and rug industry, has faced the disappearance of approximately half of its establishments in the last decade. Still, the textile products sector has practically doubled its exports since 1994, with the result that employment went from 28,147 in 1994 to 33,383 in 2000."

(b) European Community

608. The communication received from the European Community contained the following concerning industrial adjustment:

"The textiles and clothing sector continues to occupy a central position in the economy of the European Community with around 2,100,000 employees.

Over recent years the sector has made efforts to increase competitiveness against a backdrop of continuous market opening. It has not been possible, however, to reverse the general downward trend in production and employment.

In 1999 production in the EU clothing sector went down 10.1 per cent, while the textile sector witnessed a 4.1 per cent reduction as compared to 1998. This reduction was the continuation of a steady downward trend in both sectors between 1995 and 1999, that was interrupted by a brief production increase in the textile sector in 1997, only to be followed by a renewed slump in 1998.

Of the 2.1 million people employed in textiles and clothing in 1999, about 1,159,300 worked in the textile sector and 923,500 in the clothing sector. In 1999 altogether some 92,000 jobs were lost in the Community's textiles and clothing industry, which amounted to a reduction of 4.2 per cent of the work force as compared to the previous year. This fall in employment was greater than the one witnessed in 1998 (46,000 jobs) and 1997 (27,000 jobs). Employment in the textile sector went down 3.3 per cent in 1999, while employment in the clothing sector decreased by 5.3 per cent.

The level of investment in the clothing sector fell by 13.4 per cent in 1999, as compared to 1998. In the textile sector the reduction was 3.2 per cent. Capacity utilisation was at 80 per cent in the clothing sector and at 82 per cent in textiles.

Against this background the textiles and clothing sector has, nonetheless, improved its competitivity at an international level in particular as a result of its specialisation in the high added value end of the sector and an active exporting strategy.

A series of Community programmes assist structural adjustment. Thus, the textiles and clothing sector is in a position to take an advantage of a series of Community programmes destined to favour autonomous adjustment such as reconversion and modernisation by way of assistance from the structural funds in regions most affected by permanent adaptation in the sector. The European social fund provides an important instrument to assist the requalification or conversion of workers in all sectors affected by restructuring including

textiles and clothing. The textiles and clothing sector can also take advantage of programmes concerning technological research and development and small and medium enterprises."

(c) Japan

609. The communication of Japan stated the following:

"The textile and clothing industry, which creates about 2 million employment, is one of the key industries in Japan. But in recent years, the situation surrounding the industry is facing the difficulties caused by the contraction of economic growth rate, maturity of domestic market and an ailing of Japanese domestic market. Under the severe circumstances mentioned above, the 'Vision of Japan's Textile Industry and Ideal Policies for the Industry' was made public in December 1998. The goal of the new textile policy is to promote the reforms for the development of the Japanese textile and clothing industry. To achieve this goal, the Japanese government is making use of the general industrial policy measures, not targeted specifically at the textile and clothing industry as it used to be. Following the principle, the Law for the Structural Improvement of the Textile Industry, which had been the legal basis in supporting textile and clothing industry, was abolished in June 1999. At the same time, the Textile Industry Restructuring Agency, which had been operating various measures based on the Law, was also abolished."

(d) Turkey

610. The information provided by Turkey was as follows:

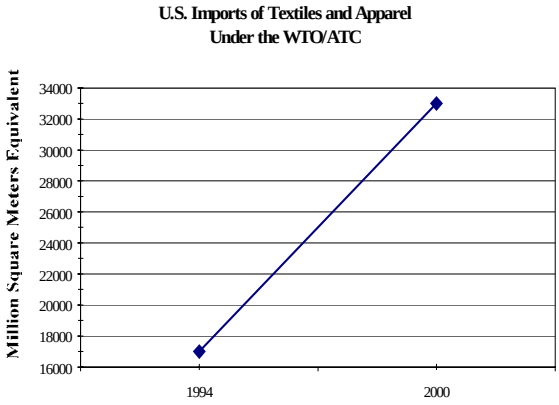
"On the basis of sub-sectors of textiles, the number of companies is high only when the production code 1723 (production of ropes, strings, twines and nets) is involved. Similarly, manufacturing of clothing except those made of fur, preparation and spinning of textile fibers and weaving of textiles are the sectors in which exist a lot of companies with intensive competition. In recent years the production of products with a high value added have increased. However considerable advancements still remains to be fulfilled in future, in the areas of both the production based on fashion and trade mark in the ready-made garment sector, and the production of industrial textiles.

Since there is no updated information available regarding the sectoral production structures and competitivity indicators of the countries that are specialised in the production of textiles and ready made clothing, it seems impossible for the time being from our country's perspective, to make a comparison and an exact evaluation."

(e) United States

611. The communication of the United States included the following with respect to industrial adjustment:

"Since the WTO came into effect, US imports of textiles and apparel have increased by over 90 per cent (in volume):



US imports of textiles and apparel increased by 90.2 per cent overall since the WTO entered into force, or by an average rate of 11.3 per cent each year (in square meters equivalent). In value terms, imports of textiles and apparel increased absolutely by 79.4 per cent, or by an average rate of 10.2 per cent each year since the WTO has entered into force. Over the last five years, even with quota arrangements in place, US imports of textiles and apparel grew at a faster rate than US non-oil imports (60.7 per cent versus 59.5 per cent in absolute terms, or 9.95 per cent versus 9.79 per cent average annual growth).

The United States textile and apparel industries continued their adjustment efforts, in the face of significantly deteriorating economic conditions in recent years. Job losses have been significant: the industries have lost 534,000 jobs, which is equivalent to approximately 89,000 jobs per year since the WTO came into effect, or, in total, nearly one-third of the work force, with a particular impact on the apparel sector. Although textile industry profits have been declining in recent years, the textile industry experienced its first quarterly loss in almost five years (which was also the largest quarterly loss in more than twenty years, and will likely contribute to the first annual loss in fifty years) in the third quarter of 2000. Textile and apparel plants have closed or announced closings at a rapid rate. Since the beginning of 1998, in excess of 150 plants have closed."

(f) Comments made by the ITCB members

612. The contribution received from the ITCB Members contained the following comments with respect to this topic:

"Article 1.5 provided that in order to facilitate the integration process, Members should allow for continuous autonomous industrial adjustment and increased competition in their markets. Based on available information, and taking into account the implementation of Articles 1 and 2 in particular, the TMB report should include an assessment of the extent to which regard has been given to the observance of this principle by restraining Members who have so far demonstrated little concrete efforts in the integration of commercially meaningful restrained products before the end of the transitional period."

2. Additional Comments and Observations of the TMB

613. In considering the information and comments received, the TMB recalled that five Members had provided relevant information in the context of the implementation of the provisions of Article 1.5. Since there had not been any standard format for submitting information, it was upon the discretion of the Members concerned to decide on how to approach this issue, what kind of information should be provided and also, which aspects of the broader notion of structural adjustment and competition in the market should be highlighted. As reflected in paragraphs 607 to 611 above,

some 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. This is also implied in the fact that in addition to Canada, the European Community and the United States, two other Members (Japan and Turkey) also provided information to the TMB regarding developments in this area.

614. 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 (Canada, as compared to the growth of the market for textiles and clothing; US, as compared to all non-oil imports);

- 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 (European Community); the remaining primary textile firms have been relatively successful in increasing their competitiveness, in part through exporting, in capital intensive sectors (Canada) and the clothing industry has also adjusted by shifting its production to export markets (Canada), also having a favourable effect on employment (Canada).

615. 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 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.

616. 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.

617. 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 Community and the United States. As regards the reference to the integration programmes already implemented and to be implemented on 1 January 2002[205], the TMB recalls that developments relating to the integration process are dealt with in details in other parts of the present report.

B. REGIONAL ARRANGEMENTS AND INITIATIVES

618. The ATC, being an agreement applied during a transition period with the final objective (and, at the same time, irrevocable legal obligation) of integrating the textiles and clothing sector into the rules and disciplines of GATT 1994, does not contain any provision regarding regional arrangements and initiatives, since these are covered, to the extent applicable, by provisions of the WTO Agreement and other Multilateral Trade Agreements. However, against the background of some perceptions that a lot of developments in textiles and clothing trade during the ATC implementation have been related to regional arrangements and initiatives, the TMB felt that it was necessary to address this issue, to the extent possible, while drawing up its comprehensive report.

619. Speaking of regional arrangements and initiatives, and in particular of their potential impact on textile and clothing trade flows, the most obvious examples which come immediately to mind are NAFTA, the EC-Turkey Customs Union Agreement, the Mediterranean Agreements or the Europe Agreements concluded by the European Community. All these agreements were referred to the WTO under the provisions of Article XXIV of GATT 1994 and were or are being examined by the relevant WTO body(ies). As to the possible impact of the implementation of these regional agreements on trade in textiles and clothing, the lack of sufficiently detailed, appropriate statistical information and the fact that in most instances statistics cannot and do not differentiate between trade effected on preferential or non-preferential terms, seriously hamper the TMB's ability to conduct a thorough examination and reach reliable conclusions. Keeping in mind these limitations, on the basis of the preliminary version of the background statistical information with respect to trade in textiles and clothing (made available to the TMB in April 2001)[206], the following points can be made:

1. NAFTA

(a) Trade in textiles

620. The share of the value of intra-exports (i.e. exports directed to NAFTA countries) shows a continuously increasing trend within the total exports: it increased from 42.3 per cent in 1990 to 61.7 per cent in 1998 and 68.9 per cent in 1999.

621. Regarding textile imports of the United States from the two other NAFTA countries, these increased from Canada by 65 per cent (in value terms) from 1995 to 1999 and the share of Canada within overall textile imports increased from 10.33 per cent in 1995 to 12.45 per cent in 1999. Imports of textiles from Mexico increased by 82 per cent from 1995 to the year 1999 and the share of these imports within total imports increased from 7.02 per cent in 1995 to 9.38 per cent in 1999. Both in the years 1995 and 1999, of the WTO Members, Canada and Mexico were, respectively, the second and the third major exporters of textiles to the US market. Notwithstanding this, during the period 1995 to 1999 the European Community kept its rank as first supplier, though its share decreased from 22.77 per cent in 1995 to 18.18 per cent in 1999 (as opposed to the combined share of Canada and Mexico which increased during the same period from 17.35 per cent to 21.83 per cent). Overall, it would appear that the "slice" of the market for textile imports held by the NAFTA partners of the United States amounted to slightly more than one fifth of the total imports. It would also appear that

[205] See paragraph 612.

[206] This document, prepared by the WTO Secretariat, at the TMB's request, contains information for the period 1995 to 1999. The updated version, including data for the year 2000, will be issued by the Secretariat for the information of WTO Members, as a background document to the second major review to be conducted by the CTG.

the combined gain in the market share of some 4.5 percentage points of Canada and Mexico, by and large corresponded to the loss of the respective share by the European Community during the same period, while imports from Asia largely held (even slightly increased) their market share (48.74 per cent in 1995; 50.01 per cent in 1999).

622. In Canada's textile imports, the United States preserved and strengthened its dominant role as main supplier, increasing its share in imports from 61.70 per cent in 1995 to 65.32 per cent in 1999. While imports from Mexico increased by 56.6 per cent during the same period, its share remained very modest (1.58 per cent in 1995 and 1.98 per cent in 1999). Essentially, due to the importance of imports from the United States, three fourths of the Canadian market for imports was held by developed countries.

(b) Trade in clothing

623. The share of the value of "intra-exports" within NAFTA also indicates an important increase: while such exports represented 42.7 per cent of total exports in 1990, this share increased to 67.0 per cent and 70.2 per cent, respectively, in 1998 and 1999.

624. An overview of trends and developments of US imports of clothing products reveals, *inter alia*, that:

- total imports increased significantly during the period 1995 to 1999 (by 42.1 per cent);
- slightly more than 90 per cent of these imports originated in developing economies;
- there appears to be an undeniable change in the dynamics in the sense that the rate of growth of imports from Asia was significantly lower in the period 1995 to 1999 than that from Latin America;
- Mexico has become the number one supplier to the US market, while Canada represents no more than 3 per cent of total US imports;
- data also indicate that imports from some countries in the Caribbean region increased to a significant extent[207];
- during the period examined, the share of the market gained by Latin American exporters corresponded more or less to the loss experienced by Asian exporters (roughly 8 percentage points).

625. As far as Canadian imports are concerned, it can be established that:

- total imports increased by 22 per cent from 1995 to 1999;
- Asia maintained its share in the market (64,58 per cent in 1995; 65.94 per cent in 1999) and though imports from Latin America increased by 116.2 per cent, the share of these imports still remained relatively modest (3.68 per cent in 1995; 6.52 per cent in 1998);
- while imports from Mexico increased by the impressive rate of 286.5 per cent; Mexico's share amounted only to 3.36 per cent in 1999 (from 1.06 per cent in 1995);

[207] See also paragraph 635.

- the share of imports from developing economies increased (from 69.98 per cent to 74.62 per cent);

- the increase of the market share of the developing economies was achieved at the expense of commensurate loss of some share by the United States (from 18.42 per cent to 17.17 per cent), Western Europe (from 10.23 per cent to 7.80 per cent) and transition economies (from 1.45 per cent to 1.01 per cent).

626. The TMB reiterates, however, that the trends and developments described in paragraphs 620 to 625 should be seen against the background of significant overall growth of imports in the US and Canadian market and also that, on the basis of available statistical information, it cannot be established what was the share of imports from NAFTA countries that had been effected on a preferential basis ("NAFTA treatment").

2. Agreements Concluded by the European Community

(a) Trade in textiles

627. While the value of total imports of textiles by the European Community showed a somewhat fluctuating trend (slight decrease in 1996, followed by an increase of 5.63 per cent in 1997 and by a further increase of 6.07 per cent in 1998, imports decreased by 7.52 per cent in 1999), in comparing imports effected in 1995 to those of 1999 (i.e. US$ 17,939 million), a modest increase of the magnitude of 1.92 per cent can be established. During the same period, imports from developing economies increased by 2.78 per cent, slightly increasing their share in total imports (from 62.26 per cent in 1995 to 63.15 per cent in 1999); and the same applies to the major source of imports in terms of regions, namely Asia (the value of its imports increased by 4.75 per cent and its share of imports went from 44.98 per cent in 1995 to 46.50 per cent in 1999). During the same period, the share of imports from Western Europe registered a slight decrease from 20.58 per cent in 1995 to 19.52 per cent in 1999, while the share of imports from the United States also showed a slight decrease from 8.94 per cent in 1995 to 8.58 per cent in 1999. On the other hand the share of imports from transition economies increased from 10.42 per cent in 1995 to 13.09 per cent in 1999.

628. It can be observed that during the same period, imports from Turkey, with which the European Community had entered into a Customs Union Agreement notified under Article XXIV of GATT 1994, increased by 43.06 per cent, resulting in an increase of Turkey's share in total imports (7.60 per cent in 1995; 10.73 per cent in 1999) and also making Turkey the number one exporter among WTO Members to the EC market.

629. Imports from those Central and Eastern European countries that concluded, at different points in time, so-called Europe Agreements with the European Community (equally notified under Article XXIV) increased by 21.25 per cent from 1995 to 1999, reaching a share of 12.73 per cent of total imports in 1999.

630. Since developing economies taken altogether, and among them Asia, preserved their share in total imports, the increases indicated in paragraphs 628 and 629 were mainly compensated by some loss of the share of imports from developed countries and also from some developing regions (Middle East, Africa and Latin America).

(b) Trade in clothing

631. The value of total imports of clothing products increased by 16.9 per cent from 1995 to 1999, to US$ 50,166 million. The value of imports from developing countries increased by 16.75 per cent from 1995 to 1999, while its share of imports remained stable (79.62 per cent in 1995; 79.51 per cent in 1999); with small changes affecting different regions (Asia: an increase of 1.28 percentage points

to 50.88 per cent; Africa: a decrease of 0.28 percentage points to 12.93 per cent; Middle East: a decrease of 0.42 percentage points to 1.58 per cent, and Latin America: a decrease of 0.13 percentage points to 0.64 per cent).

632. Imports of clothing from Turkey followed the general trend. They increased by 16.94 per cent from 1995 to 1999. The share of Turkey in total imports remained constant (10.92 per cent) and Turkey was the number one exporter of clothing to the EC market among WTO Members (second exporter overall), both in 1995 and 1999.

633. Imports from the Central and Eastern European countries referred to in paragraph 629, increased by 20.62 per cent during the period considered. As a result, their share in total imports of the European Community slightly increased (to 16.72 per cent in 1999).

634. As in the case of NAFTA, the TMB is of the view that apart from describing certain developments, as reflected in paragraphs 627 to 633, no reliable conclusions can be drawn on the effect of regional arrangements and initiatives on trade flows of the European Community either. There are multiple reasons for this, such as:

- though the EC-Turkey Customs Union Agreement entered into force only in 1996, Turkey had already been the first supplier among WTO Members of clothing products to the European Community in 1995 and its share within total imports did not increase during the period considered;

- the European Community also concluded agreements with reference to Article XXIV with several Mediterranean countries, whose trade flows are not mentioned in the preceding paragraphs;

- it would appear that outward processing trade played an important role in the EC's trade in textiles and clothing, in particular with Mediterranean countries and countries in the Central and Eastern European region. This can be mainly explained by the geographical proximity and the well-established cooperation among economic operators, while the Article XXIV Agreements were concluded only subsequently and most of the developments in trade flows can hardly be attributed to the implementation and effect of these agreements;

- in the context of the above, it is also noteworthy, however, that the European Community also has well-established outward processing arrangements also with a number of other Members, not forming part of any regional arrangement with the European Community (the Community notified under Article2.1 additional levels for such types of imports with respect to India; Indonesia; Macau, China; Malaysia; Pakistan; Philippines; Singapore; Sri Lanka and Thailand);

- in any case, an assessment of regional arrangements and initiatives would not be complete without analysing trade effected with ACP countries under the Lomé Convention, which the TMB is unable to do, due the lack of sufficient information and of the necessary knowledge and understanding of how the system of preferences has operated.

3. US Trade Arrangements with Countries of the Caribbean Basin

635. As already indicated earlier[208], US clothing imports from some countries of the Caribbean region increased to a significant extent during the period 1995 to 1999. In all likelihood, part of these

[208] See paragraph 624.

developments was attributable to the implementation of the CBI programme (Caribbean Basin Initiative), which, *inter alia*, provided important market access opportunities under guaranteed access levels (GALs) for apparel assembled in these countries using fabrics formed and cut in the United States. Since available statistical information does not identify the amount or share of trade that took place under such special programmes and the amount of other ("ordinary") imports, the TMB is not in a position to offer any evaluation of the effect of the implementation of the CBI programme.

636. The Trade and Development Act of 2000 adopted by the US Congress and which was implemented as of 1 October 2000, appears to offer 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. In response to the TMB's request for information, the United States answered that it would seek for a waiver from WTO Members for the operation of various aspects of the Trade and Development Act of 2000 and provide full information to the WTO at that time. According to the US communication, in the interim, detailed information concerning the Trade and Development Act may be found on US Otexa's website.[209]

4. African Growth and Opportunity Act Adopted by the United States

637. The other portion of the Trade and Development Act of 2000 was 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.[210]

5. Recent Indications Regarding Developments in Trade in 2000

638. Recent indications[211] reveal, *inter alia*, that in the year 2000, the previously observed rapid growth of US imports from its two NAFTA partners somewhat slowed down. This continued a trend first observed in 1999. Combined imports of textiles and clothing from Mexico and Canada grew more slowly in 2000 than imports from all sources. While imports from all sources increased, in volume terms, by 14.8 per cent, those from Canada increased by 13.0 per cent and from Mexico by 14.6 per cent. More significantly, while total imports of clothing from all sources grew by 13.7 per cent in volume terms, imports from Mexico increased by 9.5 per cent. Rather than NAFTA countries, the driving force behind the increase of textile and clothing imports in 2000 was apparently a surge of imports from Asia, in particular from ASEAN countries (+16.6 per cent), Pakistan (+29.3 per cent) and Bangladesh (+24.2 per cent). Textile and clothing imports (combined) from some other Asian Members remained, however, much below the average growth rate (Hong Kong, China: an increase of 10.4 per cent; India: +8.6 per cent; Korea: +7.3 per cent).

639. Based on the same sources, it would also appear that textile and clothing imports of the European Community during the first ten months of 2000 from the restrained developing Members (former MFA Members) rose by 20.7 per cent in value (against a 10.4 per cent increase of EC imports from all non-EC sources). In volume terms, however, this growth was significantly smaller (7.1 per cent). EC imports from the Mediterranean countries, during the same period, increased by 14 per cent in value and 11 per cent in volume. The value of textile and clothing imports from Turkey grew by 15.5 per cent and from the Central and Eastern European countries taken together, imports increased by 13 per cent in value terms.

640. These indications in paragraphs 638 and 639 also seem to highlight that the issue of potential effect of regional arrangements and initiatives should be approached and assessed with the necessary caution.

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[209] See also paragraph 270.
[210] See also paragraph 636.
[211] Textile Outlook International, March 2001.

C. ELIMINATION OF RESTRICTIONS ON IMPORTS FROM CERTAIN NON-WTO MEMBERS

641. The contribution received from ITCB members in response to the TMB's request for information and comments contained, *inter alia*, the following:

> "Article 1.6 provided that the rights and obligations of Members under the WTO were not affected, save to the extent provided in the ATC.
>
> There are numerous instances in which quota restrictions on non-WTO Members have been eliminated while keeping them in place for WTO Members. Thus, restrictions on Russia and a host of other countries have been withdrawn. The TMB may detail full information with respect to such instances and assess their consistency with the ATC.
>
> We believe that in light of above facts, the TMB report ought to conclude that the restraining Members failed to give full meaning to these basic principles of Article 1 of the ATC.[212] It should suggest that the CTG recommend to the restraining Members to take necessary steps to do so."

642. In reply to the TMB's subsequent request for further clarifications, in a further communication, ITCB Members stated the following:

> "With respect to the elimination of quota restrictions on non-WTO Members while keeping them in place for WTO Members, we note that restrictions previously applied by the EU on imports of certain textile and clothing products from Russia, Ukraine, Bosnia-Herzegovina, etc. have been eliminated. Extracts from relevant Official Journals of the European Communities [...] showing the prior existence of quota restrictions on these countries and their subsequent elimination are attached. [213] There might be other similar instances, information about which, we hope, the TMB would be able to obtain and detail in its report.
>
> The basic principle of MFN (as, e.g., in Article I of GATT 1994) relates to imports from all countries, whether WTO Members or non-WTO Members, i.e., any favour accorded by a WTO Member to any country, whether or not it is a WTO Member, must also be accorded to all WTO Members. If this is not done and non-WTO Members are treated more favourably than WTO Members, the balance of rights and obligations under the WTO is lost. Such more favourable treatment is inconsistent with the MFN principle, which cannot be departed from unless specifically provided for in the ATC.
>
> […] We expect the TMB to assess the consistency of elimination of such restrictions on non-WTO Members. We believe that, ATC being an integral part of the WTO Agreement, such elimination is not consistent with EU's obligation as to Article XIII of GATT 1994 in as much as it is not excepted from the ATC by virtue of its Article 1.6.
>
> With regard to the elimination of restrictions *vis-à-vis* some of these countries that have since joined the WTO, the issue of conformity arises by virtue of the last sentence of ATC's Article 2.15. Absent any notification to the TMB that, in considering the elimination of those restrictions, the treatment of similar exports from other WTO Members had been taken into account, it is apparent that this was not the case."

643. In a follow-up communication to its first reply to the TMB's request for information and comments, the European Community stated the following:

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[212] The facts referred to in this sentence seem also to include issues covered by Articles 1.2, 1.4 and 1.5.

[213] Not reproduced in this report. See G/TMB/N/403/Add.1.

"… Concerning its agreements with non-WTO Members, the European Communities (the 'EC') considers that these matters do not fall under the purview of the Textiles Monitoring Body (the 'TMB').

However, for the purpose of transparency, the EC is pleased to inform the TMB that in 1998 the EC agreed with the Russian Federation to apply the provisions of the Partnership and Co-operation Agreement between them to trade in textile and clothing products and removed all quotas on textiles and clothing products.

Similarly, the EC has by agreement removed its quotas with Ukraine.

Equally, the EC has removed restrictions with Bosnia-Herzegovina by agreement initialled on 24 November 2000 and also those maintained against Croatia by agreement initialled on 8 November 2000 prior to Croatia's accession to the WTO on 30 November 2000. Previously the restrictions were maintained jointly against Bosnia-Herzegovina and Croatia. The EC is currently in the process of signing or exploring Stabilisation and Association Agreements, i.e. free trade agreements with these countries.

In addition, these above-cited arrangements are designed to foster improved trade relations, and in particular improved access in the textiles and clothing sector for both parties. They therefore promote trade liberalisation within the context of mutually beneficial arrangements.

As stated above, however, issues of these agreements and arrangements are not relevant to the TMB's review of the second stage of integration as foreseen by Article 8.11 of the Agreement on Textiles and Clothing (the 'ATC')."[214]

644. In reflecting on the concerns expressed and the views adopted by the ITCB members as well as on the replies provided and the positions taken by the European Community, the TMB briefly addressed different aspects (economic significance, possible political considerations involved, legal issues) of the cases mentioned and the arguments made.

645. It could be argued that the economic significance of the measures in question had to be seen in the context of their likely very limited consequences on trade flows. According to this argument, most, if not all of the countries concerned are very small suppliers to the EC market; they do not have a well developed industry and infrastructure which would allow them to take a real advantage of the elimination of the restrictions. It could be also argued, however, that there can be WTO Members which are even smaller suppliers against which the European Community applies quantitative restrictions. The argument was also made that if the restraints can be abolished with respect to the imports of some countries, the whole rationale behind continuing to maintain restrictions against imports from others can be called into question. A counter-argument to this latter observation was that the size, the production capacity and, therefore, the export potential were to be taken into consideration. As regards possible political considerations involved, it was observed, however, that such considerations do not fall under the purview of any discussion the TMB can have on these matters.

646. 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 Article 1.6 (of the ATC). The TMB observed in this

[214] Footnotes to the EC communication are omitted. They provided references to those official EC documents in which the respective agreements had been published. For the communication, see G/TMB/N/407/Add.1

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. In support of this observation, the TMB referred, as an example, to the restrictions notified under Article3.1. If a restriction were claimed to be justified under any GATT 1994 provision by the Member concerned, any possible challenge to this claim, pursuant to Article 3.4, may be pursued under the relevant GATT 1994 provisions or procedures in the appropriate WTO body, but not in the TMB.

D. ACCESSION OF NEW MEMBERS TO THE WTO

647. The TMB was of the view that, based on developments up to now, it should offer two brief comments with respect to the issue of accession of new Members to the WTO. First, the Body recalled that unless the respective protocols of accession and/or reports of the accession working parties provide otherwise, the WTO Agreement and all the Multilateral Trade Agreements falling thereunder, including the ATC, enter into force on the first day of the application of these instruments to the newly acceded Members. Therefore, all the relevant notification obligations under the ATC (such as those made pursuant to Articles 2 and 3 as well as Article 6.1) are also due to be submitted at that time. It could be observed that none of the new Members had complied with such obligations in time and, therefore, their respective notifications, if any, fell in the category of "late notifications", regarding which the TMB observed, on each and every occasion, that with respect to notifications addressed to the TMB after the relevant deadlines, the TMB's taking note was without prejudice to the legal status of such notifications.

648. Second, a new Member's accession took place, by definition, after the implementation of certain measures by WTO Members, pursuant to specific provisions of the ATC (integration programmes; elimination of certain restrictions, if applicable, etc.). It could be observed that newly acceded WTO Members have been provided with the same treatment as the that which had been provided to former Members in terms of extending the benefits of the respective integration stages as well as, if applicable, of those related to the elimination of restrictions by way of integration.

XII. COMPLIANCE WITH NOTIFICATION REQUIREMENTS UNDER THE ATC

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

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

651. 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".[215] In the conclusions adopted by the CTG in February 1998, as a result of its 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".[216]

[215] See G/L/179, paragraph 330.
[216] See G/L/224, paragraph 61.

652. Adherence to the time-bound notification obligations has, however, deteriorated over time. While 52 Members submitted notifications pursuant to Articles 2.6 and 2.7 (first stage integration programme), and 50 notified their second stage integration programme, only 40 Members had, as of 20 July 2001, submitted their programme of integration for Stage 3. Furthermore, 25 of such Members had submitted the notification of their programme of integration for Stage 3 only after the deadline prescribed in the ATC had lapsed. Non-compliance with notification requirements, including the deadlines, may have serious implications on Members' rights and obligations under the ATC.

653. In some instances certain Members took certain measures allegedly under the ATC without providing notification or information to the TMB. In some other cases, the Member or Members concerned considered that the particular measure taken did not fall under a particular provision of the ATC and, therefore, the measure was not notified, even though it would appear that, as a measure related to trade in products falling under the coverage of the ATC, it should have been notified to the TMB, or information on it should have been made available to the TMB, for example under the provisions of Article 3.3. In a number of specific cases, despite repeated requests, no reply was provided to the TMB's request for clarification, precisions or additional information by the Members concerned.

654. In the context of the preparation for the present comprehensive report, the TMB issued, in February and in April 2001, a request for notifications and information to WTO Members, again reminding them of certain notification obligations contained in the ATC. The TMB received replies to that requests and to follow-up questions it raised with certain Members from eight Members (one of these submitting a reply on behalf of ITCB members).

XIII. FUNCTIONS OF AND WORK CARRIED OUT BY THE TMB

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

656. The composition of the TMB for the second stage of implementation of the ATC (1998 to 2001) was decided by the General Council on 10 December 1997 (WT/L/253). Ambassador András Szepesi was re-appointed Chairman of the TMB by the General Council on 10 December 1997, for three years beginning on 1 January 1998 (WT/GC/M/25), and for a subsequent period of four years (i.e. until 31 December 2004) on 15 December 2000 (WT/GC/M/61). The list of TMB members, alternates, observers, and successive changes, are contained in the reports of the TMB.

A. DISCHARGING FUNCTIONS ON AN AD PERSONAM BASIS

1. TMB Working Procedures

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

2. Decision of the CTG

658. When adopting its working procedures, the TMB invited its Chairman to submit to the CTG the following for appropriate action: "WTO Members which, pursuant to the decision of the General Council of 31 January 1995, appoint TMB members under Article 8.1 of the Agreement on Textiles and Clothing accept that TMB members serve in their *ad personam* basis and not as government representatives. Consequently, they shall not give TMB members instructions, nor seek to influence them, with regard to matters before the TMB. The same applies to alternates". This proposal was transmitted to the CTG in July 1995.

659. In the context of its 1996 annual report to the CTG (G/L/113, paragraph 107), the TMB requested the Council to take appropriate action on this proposal. On 12 February 1997, the CTG, following consultations held by its Chairman, adopted a decision on the *ad personam* status of TMB members, as follows: "WTO Members which, pursuant to the decision of the General Council of 31 January 1995, appoint TMB members under Article 8.1 of the Agreement on Textiles and Clothing accept that TMB members discharge their function on an *ad personam* basis and not as government representatives. Consequently, they shall not give TMB members instructions, nor seek to influence them, with regard to matters before the TMB. The same applies to alternates" (G/C/W/20/Rev.1).

3. Code of Conduct Adopted by the DSB

660. The TMB took note of the decision of the DSB, on 3 December 1996, to adopt the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes (WT/DSB/RC/1), in view of the fact that such Rules apply, *inter alia*, to the Chairman of the TMB and other members of the TMB secretariat called upon to assist the TMB in formulating recommendations, findings or observations pursuant to the ATC, as well as, to the extent prescribed in the relevant Section of the Rules, to members of the TMB (G/TMB/R/22, paragraph 17).

B. CIRCULATION OF REPORTS AND NOTIFICATIONS; DERESTRICTION OF DOCUMENTS

1. Circulation of Reports

661. During the period considered, the TMB adopted reports of its meetings, which were circulated to WTO Members for their information (G/TMB/R/35 to 80). The TMB adopts such reports at the subsequent meeting at the latest, on the basis of a draft proposed by the TMB secretariat incorporating the text of any recommendation, finding and observation by the TMB; these texts themselves have already been adopted by the TMB. The TMB's reports are, therefore, normally circulated to WTO Members about a month after each meeting of the TMB. In view of this time-lag, the TMB also continued its practice, during Stage 2, of authorizing its Chairman on several instances, in particular when the TMB had reviewed dispute cases between WTO Members, to issue a note forwarding information on the TMB's recommendations, findings and observations to WTO Members (G/TMB/13 to 23).

662. 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). The third annual report was submitted in November 1997 (G/L/206), the fourth in November 1998 (G/L/270), the fifth in September 1999 (G/L/318) and the sixth in October 2000 (G/L/398).

2. Circulation of Notifications

663. In conformity with its working procedures (G/TMB/R/1 and 11), notifications received by the TMB pursuant to Articles 2.1, 2.2, 2.7(a) and (b), 2.8(a) and (b), 2.10, 2.11, 2.15, 3.1, 3.3, 3.4, 6.1 and 7.2 of the Agreement have been circulated to WTO Members without delay, it being understood

that the TMB may examine or review these notifications at a later stage. Notifications addressed to the TMB for review other than those above were, after such review, also circulated to WTO Members.

3. Derestriction

664. 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 (G/TMB/W/- and G/TMB/SPEC/- series). 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" (G/TMB/R/1). The TMB had taken note of the General Council's decision and decided that it would act in full compliance with it (G/TMB/R/16), which it has done since then.

C. NUMBER OF MEETINGS, SCHEDULING OF MEETINGS

665. From August 1997[217] until the end of July 2001, the TMB held 46 meetings totalling overall 100 working days. It completed its review of five safeguard measures introduced pursuant to Article 6.10, as well as 13 safeguard measures applied under Article 6.11. The TMB also reviewed three matters referred to it under Article 8, for which it had invited participation of the Members concerned, in accordance with its working procedures. It also reviewed one restraint measure agreed and notified pursuant to Article 6.9 (the respective request for consultation, pursuant to Article 6.7, had been made during Stage 1 but could not be dealt with in the comprehensive report of the TMB for Stage 1). In addition, the TMB reviewed, *inter alia*, three new notifications and 28 additions, revisions or corrections to notifications made pursuant to Articles 2.6 and 2.7(a) and (b), 10 new notifications and 30 corrections, additions or revisions to previous notifications made under Articles 2.8(a) and 2.11, as well as 31 notifications under Articles 2.8(b) and 2.11. The TMB has also started the review of 9 notifications under Articles 2.8(b) and 2.11. Furthermore, the TMB reviewed two notifications under Article 3.1, and took note of two additional administrative arrangements notified under Article 2.17, as well as of four additional notifications under Article 6.1. For this purpose, the TMB, in many instances, sought additional information or explanations from the Members before the review could be completed. This, in many cases, led to modifications of the original notifications, with a view to bringing them in line with the relevant provisions of the ATC.

666. Though the TMB established its tentative schedules of meetings before the end of each year for the following calendar year, in view of the large number of parallel meetings of other WTO bodies the TMB was obliged, on a number of occasions, to make adjustments in its scheduled meeting dates. The same need arose, in a number of other instances, due to the agenda of the respective meetings (in particular, when disputes between Members were referred to the Body which had to be examined within well defined time-frames).

D. TRANSPARENCY

667. The TMB has pursued its efforts to ensure and to improve the transparency of its proceedings. It has circulated most of the notifications received to WTO Members without delay, in conformity with its working procedures[218]. It has also provided as much information as possible in its reports, reproducing in particular in details the views of the parties to a dispute, and also giving, to the extent possible, full details of the reasons for the decisions reached by consensus, including of the rationale for its findings and recommendations. Furthermore, the concern for transparency was germane to the fact that in developing its working procedures the TMB agreed that, in dispute cases, representatives of the Members involved could be present and participate in the discussion, within certain limits, throughout the review, up to, and in some cases, including, the drafting of the recommendations. The TMB had also continued the practice of authorizing its Chairman to circulate a note to WTO

[217] The first comprehensive report of the TMB covered the period up to 24 July 1997.
[218] See also paragraph 663.

Members immediately following the conclusion of its review of dispute cases, so that its recommendations or findings would be available to WTO Members in advance of the circulation of the relevant report of the TMB.

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

E. DECISION-TAKING

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

670. This rule of decision-taking implies that not only in cases of disputes between WTO Members, but practically in all instances, including the taking note of notifications and the adoption of its reports, the TMB has to proceed by consensus. The TMB noted, in this regard, the important number of matters it had to consider. It has to be noted that, the TMB succeeded, during the period under review, to reach consensus decisions with respect to all the matters it considered and to make appropriate findings and recommendations.

F. VIEWS AND COMMENTS OF WTO MEMBERS IN RESPONSE TO THE TMB'S GENERAL REQUEST FOR INFORMATION AND COMMENTS

671. In reply to the TMB's request for information and comments, made in the context of the preparation of the present report, ITCB members stated, *inter alia*, that "we recognize the improvement in the transparency of TMB findings during the second stage, particularly as concerns the review of safeguard actions. It needs, however, to be pointed out that [the TMB's] findings and reports have not always been consistent. Thus, for example, while it found certain actions to be inconsistent with restraining Members' obligations, another action taken on the same basis was declared to be justified. And the TMB neglected to rectify the error[219]. Similarly although a restraint measure had been found by a dispute panel to be inconsistent with the ATC, the TMB refused to declare another measure on the same product adopted on the basis of the same market statement to be inconsistent. In the process, the TMB failed to observe the standard of review established by the panel process[220]. We also wish to remind the TMB of its mandate to keep the integration process under review (Article 2.21) as it is essential to ensuring effective application of the basic principles of Article 1 as well as the implementation of the integration process in general. We hope that the TMB also follow on its findings and recommendations".

672. In reply to the TMB's request for information and comments made in the context of the preparation of the present report, the European Community stated that it "considers that the TMB has exercised its role in a more transparent manner over time and fully supports the TMB in continuing this approach".

[219] See paragraph 232.
[220] See paragraph 524.

XIV. OVERALL ASSESSMENT OF THE IMPLEMENTATION OF THE ATC AND RECOMMENDATIONS TO THE CTG

673. The ATC provides for a transitional period of 10 years, during which the textiles and clothing sector has to be progressively integrated into the general rules and disciplines of GATT 1994. Upon expiration of this transitional period, i.e. 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. There shall be no extension of the ATC.

674. At the date of the adoption of the present comprehensive report by the TMB, more than six and a half years will have elapsed out of the 10 year transitional period. The preceding chapters provide a comprehensive overview of the developments relating to the implementation of the specific provisions of the ATC up until now, with the main focus on the implementation during the second stage of the integration process. In addition, information, together with an analysis and some comments on Stage 3 integration programmes, are also included. Therefore, as regards the key concept of integration, without prejudice to possible future measures on advanced integration, a full picture is available for the entire transitional period of 10 years. All these elements will assist the CTG, in conducting the second major review of the implementation of the ATC, to make a well-considered assessment of the state of the implementation of the Agreement, in particular on what has been achieved so far and what remains to be accomplished. The following paragraphs constitute the TMB's contribution to such an overall assessment. While this contribution does not cover all the matters raised in the different chapters of this report, it makes an attempt at drawing Members' attention to several important issues and, in conformity with the provisions of Article 8.11, also includes a number of recommendations to the CTG.

1. Integration Process. Restrictions Taken Over From the MFA Regime

675. Following certain corrections, the technical requirements for integration of the textile and clothing products into GATT 1994 in the first two stages have been met by those Members which have submitted notifications. The same applies to the third stage integration programmes notified and, if applicable, subsequently corrected or revised, of which the TMB could take note. Stages 1, 2 and 3 combined, the requirement is 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.

676. Of the Members that had carried over quantitative restrictions from the MFA regime, with the implementation of the Stage 3 programmes Canada will have integrated, on 1 January 2002, altogether 53.21 per cent, the European Community 51.39 per cent, Norway 64.99 per cent and the United States 51.35 per cent of their respective volume of 1990 imports of the products included in the Annex to the ATC.

677. An overall assessment of the respective integration programmes and related measures affecting quantitative restrictions (taken under the provisions of Article 2 and, if applicable, pursuant to Article 4), includes the following elements:

- of the 295 specific limits, sub-limits and group limits carried over by Canada from the MFA regime, six were eliminated as a result of integration during Stage 1; 23 during Stage 2; and 27 will be eliminated on 1 January 2002, since the products covered will be integrated as part of the Stage 3 integration programme. Therefore, as from 1 January 2002, Canada will continue to maintain 239 specific limits, sub-limits or group limits;

- as a result of integration of parts of restrictions during Stage 2, Canada reduced the level of the respective group levels for two Members, with reference to the provisions

of Article 4.3. Also, as from January 1998, by providing "ex-quota" treatment to some items, Canada reduced the product coverage of some restraints, while not adjusting their respective levels. As a result of the implementation of the Stage 3 integration programme, several specific limits and sub-limits will be partially eliminated, because parts of the respective categories or sub-categories will become integrated. Canada has decided to keep the level of the remaining respective restraints unchanged (i.e. not to reduce these levels with reference to the fact that their product coverage will be reduced). While the determination of the potential impact of this decision would require a case-by-case assessment, it would appear that, in some cases, this decision would amount to a significant one-time increase in access opportunities for the products concerned remaining under restrictions;

- the European Community took over 218 specific restrictions from the MFA regime to the ATC. None of these restrictions were eliminated during Stage 1; 14 were eliminated with the implementation of Stage 2; and 27 will be lifted as a result of integration for Stage 3. The European Community has not integrated parts of restrictions applied. Nor has it had recourse to the provisions of Article 2.15 during Stage 1 or Stage 2. As a result of the above, the European Community will continue to maintain 167 specific restraints as of 1 January 2002.

- Norway had maintained altogether 54 specific limits taken over from the MFA. All of these restrictions were gradually eliminated pursuant to the provisions of Article 2.15; 14 on 1 January 1996; 32 on 1 January 1998; five on 1 January 1999 and the remaining three on 1 January 2001. Thus, Norway no longer maintains any restrictions under the ATC. Moreover, some of the products previously subject to restraint were already integrated during Stage 2 or will be integrated during Stage 3;

- as a result of taking over restrictions from the MFA and the accession of new Members, the total number of specific limits and sub-limits applied by the United States amounted to 758. No restriction was phased out during Stage 1; while three specific limits were eliminated as a result of integration during Stage 2, a further 11 restraints were eliminated on 1 January 1998 with reference to Article 2.15. Furthermore, as a result of Stage 3 integration, 43 specific limits or sub-limits will be fully abolished on 1 January 2002, and as of that date, the United States will continue to maintain 701 specific limits or sub-limits;

- during Stage 2, the United States implemented downward adjustments in the restraint levels (mostly group or aggregate) in all cases when only part of a restriction became integrated. The US' Stage 3 integration programme includes several products which form part of a broader restriction (categories to be partially integrated, categories to be integrated from merged categories, products to be integrated falling under group or aggregate limits). Regarding the level of limits for the products/categories or groups remaining under restraint, it is the US' intention to implement adjustments based on trade that has occurred in the products to be integrated. In doing so, according to its communication, the United States will provide Members concerned with the opportunity to consult with the United States on this issue;

- in the first comprehensive report, the TMB observed that "the final objective of the integration of the textiles and clothing sector into the GATT 1994 would be facilitated if the Members would, whenever possible, have recourse to the provisions of Articles 2.10 and 2.15". In the conclusions of the first major review, adopted by the CTG in February 1998, the Council "… encouraged Members to continue to have recourse, where appropriate, to the provisions of Article 2.15, and to Article 2.10 on advanced integration". Also against this background, it should be recalled, that

though Norway systematically relied on the provisions of Article 2.15 for its process of gradual elimination of all the quantitative restrictions maintained and, that though Canada and the United States had also invoked these provisions, none of the Members taking over restrictions from the MFA had had recourse to Article 2.10 (advanced integration) during Stage 1 or Stage 2;

- regarding the potential significance to trade caused by these Members' implementation of integration programmes during Stages 1 and 2, the TMB had observed, in its first comprehensive report that "in terms of products selected for integration the concentration on the less value-added range of products [was] confirmed". Though the Stage 3 integration programmes notified by Canada, the European Community and the United States consist of a relatively higher share of clothing and/or made-up products compared to the previous stages, it would appear that this will not bring about major qualitative changes overall. Taken together, the share of clothing products integrated during the three successive integration stages is below 7 per cent of the volume of total imports in textiles and clothing (1990) in the case of Canada, around 6 per cent in the case of the European Community, and roughly 6.5 per cent for the United States. This also implies that, in all probability, the products integrated during the three stages would account for less in value terms than that expressed in volume and that clothing products representing roughly 20 to 30 per cent of the total volume of the respective Members' 1990 imports may only become integrated on 1 January 2005.

678. The main features of the above assessment, particularly the significant number of restrictions still in place and the perceived lack of integration of products having a potential significance to trade, have caused serious disappointment to exporting Members in terms of expectations towards progressive integration and *pro rata* implementation of the provisions of the ATC. ITCB members also stated that in sharp contrast to the integration percentage of 51 per cent, only about 20 per cent of imports under specific quota restriction would have been liberalized by the United States and the European Community at the beginning of the third stage of integration, and that increases in the restraint levels and the resulting augmentation of access should not be viewed as a substitute for the eventual integration of the products or categories concerned.

679. On the other hand, restraining Members argue that implementation is, overall, on track. Such arguments include, among others, their compliance with the integration requirements, the continuous increase, during the period of the ATC implementation, of their imports of textiles and clothing, including imports of products subject to restraint, the continued application of the growth provisions of the ATC and, in particular, its effect during the remaining 3 years of ATC implementation, and the ongoing autonomous industrial adjustment. All of these, they argue, will ensure a smooth transition to the full implementation of the ATC

680. It should be noted that Canada, the European Community and the United States have reiterated, on a number of occasions, in various higher WTO bodies, their commitment towards a full and timely implementation of the ATC.

681. In the view of the TMB, in assessing developments related to the integration process, a number of particular features of the ATC should be kept in mind. Features, such as the broad product coverage, 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 or categories for integration provided that the selection meets the basic technical requirements and that, in conformity with the respective provisions, products or categories accounting for 49 per cent of the total volume of the respective Members' 1990 imports falling under the coverage of the ATC may still remain to be integrated after the implementation of the Stage 3 integration programmes (on 1 January 2002) and, at the latest, on 1 January 2005.

Notwithstanding, in the view of the TMB, measures can be taken during the implementation of 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.

682. Also in view of the above, the TMB recommends to the CTG that the Council:

- take note of the reiterated statements of Canada, the European Community and the United States that they are fully committed to the full and timely implementation of the ATC;

- invite the Members concerned to have recourse, whenever possible, to the provisions of Article 2.10 (advanced integration) and 2.15 (early elimination of quantitative restrictions), during the period of implementation of the third stage of the integration process;

- recommend that in future notifications, to be made pursuant to Article 2.15, information should also be provided, if applicable, on the consideration given to the treatment of exports of the same products from other Members, in conformity with the last sentence of Article 2.15;

- note with appreciation that as a result of successive steps taken under Article 2.15, Norway no longer maintains any restrictions under the ATC;

- note that Canada's decision to keep the level of the respective remaining restraints unchanged, in case of partial integration during Stage 3 of products or categories that are at present subject to restraint, could also constitute, in some cases, a one-time significant increase in access opportunities in the products remaining under restriction;

- 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;

- recommend that prior to its implementation, any such adjustment should be mutually agreed between the United States and the Members concerned in the framework of the consultations envisaged in Article 4.4.

2. Use of the Transitional Safeguard Mechanism

683. During the first stage of the integration process, two Members had recourse to the provisions of the transitional safeguard mechanism (Article 6), involving 34 cases in total (United States: 27 cases; Brazil: 7 cases). The bulk of the requests for consultations under Article 6.7 was concentrated in the first half of 1995 (United States: 24 requests) and this timing, as well as the large number of cases involved caused serious concerns to several Members. They also placed the TMB in a situation which made it difficult for it to cope with these cases and all other types of notifications it had to review. In addition, the examination of the requests for consultations and of the resulting measures made by the TMB and, in some cases, subsequently, by dispute settlement panels, led to the conclusion that in most cases the United States had not complied with important obligations arising from Article 6.

684. Since the beginning of the implementation of the second stage integration process, recourse to the provisions of Article 6 has been made in altogether 29 cases. Four Members invoked these

provisions (Argentina – 17 cases; Colombia – 9 cases; Poland – 2 cases; United States – 1 case). While the number of requests for consultation was non-negligible (altogether 10) in 1998, this was followed by a further increase (18 cases) in 1999 and the decision by one Member to apply provisionally, with immediate effect the restraint measures in 13 cases. As regards the number of safeguard measures which were actually introduced and subsequently maintained, of the 10 cases initiated in 1998, no measure was taken in five cases (Colombia). In two further cases (Colombia), the restraints introduced were eliminated following the recommendations made by the TMB. In the three remaining cases (Colombia – 2 and United States –1), the Members concerned decided to maintain the measures in place, despite the recommendations of the TMB. In two of these cases (Colombia), the restraints were abolished after one year of application, while in the third case (United States), though it was maintained, the recently circulated report of the Panel largely confirmed and upheld the conclusions reached by the TMB. The Panel recommended that the United States bring the measure at issue into conformity with its obligations under the ATC and suggested that this could be best achieved by prompt removal of the import restriction. Subsequently, the United States decided to appeal certain issues of law covered by the Panel report and certain legal interpretations developed by the Panel. As regards the 18 cases initiated in 1999, no measure was taken after consultations with the Members affected in five cases (Argentina – 4 and Poland - 1), while of the 13 measures (Argentina), provisionally applied under Article 6.11, 11 were subsequently rescinded, also in conformity with the TMB's recommendations, one was rescinded after 18 months of application (again in accordance with the TMB's recommendation), whereas another continues to be maintained (*albeit* with a significantly higher level of restraint, as recommended by the TMB).

685. It is important to note that the main user of the provisions of Article 6 during Stage 1 has not had frequent recourse to them during Stage 2, while the other user did not have recourse to them at all during Stage 2. It is also noteworthy that the three other Members, which had retained their right under Article 6.1 and had recourse to the provisions of Article 6 during Stage 2, did not have recourse to such provisions prior to Stage 2. The TMB noted the shift in terms of the Members having recourse to these provisions. No recourse was made to the provisions of Article 6 in 2000, while one request for consultations was made during the first six months of 2001. The TMB observed, therefore, a substantial decline in the use of the transitional safeguard mechanism as from the beginning of the year 2000. In this light, a noticeable deceleration of the recourse to the provisions of Article 6, during the whole period covered by the present comprehensive report can be noted.

686. While there can be multiple reasons and explanations for this trend of deceleration in the recourse to the provisions of the transitional safeguard mechanism, the evolving jurisprudence of the dispute settlement system, through the respective panel and Appellate Body reports, has made a significant contribution in this regard. These rulings provided detailed guidelines to Members and established appropriate standards on which the TMB has been able to rely in its respective examinations. The significant improvement in the TMB's performance in this area, which has been achieved over time and manifested itself during the second stage of the integration process, should also be noted. The examination of the different cases, each of them on their own merit, has brought out certain methodological, procedural and substantive aspects, regarding which the position taken by the TMB, in the respective cases, can also be viewed as providing further guidance for both WTO Members and the Body in the future.

687. All in all, 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.

688. The TMB recommends to the CTG that the Council:

- while recognizing the right of Members to use the transitional safeguard provisions of the ATC, recall that such use, in accordance with Article 6.1, should be as sparing as possible;

- invite Members when considering possible recourse to these provisions, to study carefully and follow the guidelines emanating from the respective reports of dispute settlement panels and the Appellate Body as well as the standards of review applied by the TMB, as reflected in its respective reports, and also to keep in mind that the ATC will expire at the end of 2004.

3. Changes in Practices, Rules, Procedures and Categorization of Products

689. The United States implemented important changes in its rules of origin affecting ATC products on 1 July 1996. The TMB noted that, in the view of several Members, the changes introduced by the United States had adversely affected market access possibilities in some products, by disturbing security and predictability related to the exports of the products concerned, and that they disrupted trade under the ATC. Such changes are, however, foreseen under the ATC, provided that the conditions specified in Article 4.2 are met. In case of problems, the provisions of Article 4.4 provide for consultations and in the absence of a mutually satisfactory solution, the matter may be referred to the TMB. During Stage 1, the TMB received only one communication which referred specifically to Article 4.2 and to the changes in the US rules of origin. Subsequently, the notifying Member requested that this issue be removed from the TMB's agenda, in view of a mutually agreed solution reached between the two Members.

690. The TMB recalled that it had not received any notification requesting it to review any aspect of this matter under Articles 4.2 and 4.4 and to make recommendations as provided for in Article 8 during the second stage of the integration process. Following an initial agreement reached with the United States in July 1997, the European Community submitted a renewed request for consultations under the DSU during Stage 2. As a result of the consultations held, a new mutually agreed solution was agreed between the two Members which was subsequently notified to the DSB. The TMB noted that, in the view of several Members, while this bilateral solution rectified the situation mainly with respect to products of export interest to the European Community, the changes failed to restore the situation with respect to a number of products of substantial export interest to restrained Members.

691. Keeping in mind the above, the TMB recommends to the CTG that the Council:

- recall to Members that, pursuant to Article 4.2, the introduction of changes, such as changes of rules of origin "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". Also, Article 4.4 provides the possibility of requesting consultations and in the absence of a mutually satisfactory solution, of referring the matter to the TMB for its recommendations;

- invite Members not to implement any changes, except if multilaterally agreed, in their respective rules of origin during the remaining period of ATC, or, in any event, to follow scrupulously the relevant provisions of Article 4 if they consider such changes unavoidable;

- also invite Members concerned to use the provisions of Article 4.4 with a view to reaching a mutually satisfactory solution, if applicable, regarding appropriate and

equitable adjustments, with respect to any other significant changes in practices, rules, procedures and categorization of textile products.

4. Circumvention

692. The TMB noted that although Members had divergent assessments regarding the significance of problems encountered in terms of preventing and addressing issues arising from the potential circumvention of the ATC by transshipment, re-routing, false declaration concerning country or place of origin, fibre content, quantities, description or classification of merchandise and falsification of official documents, none of them condoned any such practices. However, while several Members were of the view that the extent of the problem of circumvention was greatly exaggerated, another Member stated that it remained extremely concerned about the adequacy of international cooperation to prevent illegal transshipment.

693. On the basis of the information and comments received from Members, it appeared to the TMB that a lot of effort had been made in this area by the Members concerned and that they continued to give particular importance to enhanced cooperation between them in this regard. The mere fact that only one specific matter, which would fall under the provisions of Article 5, has been referred to the TMB since the entering into force of the ATC, is a clear manifestation of these efforts.

694. The TMB shared the view that the problem of circumvention, in particular that of transshipment will not go away until the full elimination of restrictions applied under the ATC and that the best way to address such problems is to rely on the cooperation, consistent with their domestic laws and procedures, between the Members concerned.

695. The TMB, therefore, recommends to the CTG that the Council:

- invite Members to take into account the legitimate interests of both the exporting and the importing Members in a balanced manner when addressing issues related to potential circumvention in the sense of Article 5,

- recommend that actions to be taken in this area be based on the fullest possible cooperation between the Members concerned;

- recall that such strengthened cooperation should be efficient and effective, without causing unnecessary additional burden for all those involved (be they authorities or economic operators).

5. Implementation of the Provisions of Article 7

696. The TMB noted that several Members had pointed out that no non-compliance with any specific market-access commitments undertaken by WTO Members as a result of the Uruguay Round had been notified. In the view of these Members, demands for additional market-access commitments from restrained Members as a condition of full and faithful implementation of the integration process are not justified under the ATC. While recognizing the right to anti-dumping actions, the same Members emphasized that the targeting of restrained products had had the effect of causing double jeopardy to the exporting Members concerned and of impairing their right to utilize access under the ATC. These Members also identified cases when, in their view, discriminatory singling out of textile and clothing products for general trade policy reasons had taken place.

697. The TMB also noted that the European Community and the United States had expressed preoccupations that certain Members did not consider the obligation to achieve improved access to markets as an important part of the integration process and that despite commitments to take the necessary steps under the WTO Agreements to achieve market access for all Members, some

Members continued to maintain closed markets. Stating that more work needed to be done in the market access area, the European Community and, in particular, the United States listed a number of cases and measures, which affected the conditions for access to exporting Members' markets.

698. In additional information and clarifications provided to the TMB, the European Community stated that it had not made its ATC integration process conditional on the fulfilment of demands for additional market access. The United States emphasized that it was unaware of any demands for additional market access commitments from restrained Members as a condition for the implementation of the ATC. In the view of the United States, however, Article 7 strongly encourages market opening efforts and to the extent that requests may be made in connection with demands by restrained Members for additional access over and above the scheduled ATC liberalization, that would seem entirely appropriate and within the scope of the ATC.

699. In connection with the above, the TMB noted that no notifications or reverse notifications had been addressed to it with specific reference to Article 7.2 since the beginning of the implementation of the second stage integration process. The only two communications received by the TMB, for its information, consisted of copies of official DSB documents, requesting consultations under the DSU and other applicable agreements. The TMB also noted 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 had hardly made any formal notification to the TMB pursuant to the provisions of Article 7;

- on the other hand, several of them had 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.

700. The TMB observed that some of the comments and replies provided by Members appeared to give particular importance to certain portions or elements of the language of Article 7.1, while more or less ignoring some other elements also forming part of the language of this Article. The TMB is of the view that the language of Article 7.1 should be read in its entirety, including the context in which the obligations thereunder are defined, the relevant obligations themselves and the objectives they are designed to accomplish, together with the confirmation that "[s]uch actions [referred to in the introductory sentence of Article 7.1] shall be without prejudice to the rights and obligations of Members under GATT 1994".

701. The TMB also noted that almost all the responses provided by WTO Members to the TMB's request for information included a number of comments related to tariffs, which could be discussed in the CTG when conducting the major review on the implementation of the ATC during the second stage of the integration process. Furthermore, it 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. However, 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, create uncertainties to the exporters of the products in question. With respect to the avoidance of discrimination against imports in textiles and clothing sector when taking measures for general trade policy reasons, the TMB, while expressing doubts as to whether the issues raised in this regard amounted to a discriminatory singling out of ATC products for general trade policy reasons, also noted that all the issues mentioned had been addressed by it in the relevant chapters of this report.

702. The TMB recommends to the CTG that the Council:

- note the statements made by the European Community and the United States, that the full implementation of the integration process under the ATC is not conditional on the fulfilment of demands for additional market access by the restrained Members;
- recall that the provisions of Article 7, like any other provision of the ATC, have to be complied with by Members;
- 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;
- clarify further, if it deems appropriate, the nature and scope of the obligations outlined in Article 7.1;
- urge Members concerned to act with due care when having recourse to anti-dumping proceedings;
- recall also, that in accordance with Article 7.1(c), when taking measures for general trade policy reasons, discrimination against imports in the textiles and clothing sector should be avoided.

6. ATC Provisions Related to Special Interests or Particular Situations of Certain WTO Members

(a) Least-developed country Members

703. On the basis of the considerations detailed in Section A of Chapter X of this report, the TMB recommends to the CTG that the Council:

- re-emphasize the particular importance of a full and faithful implementation of the provisions of the ATC in favour of least-developed country Members;
- invite Members to examine the possibilities for providing, whenever possible, substantially increased market access opportunities for the textile and clothing exports of least-developed country Members;
- also invite Members to notify all the measures to be taken to this end to the TMB.

(b) Small suppliers

704. Recalling, *inter alia*, that the methodology chosen by the respective Members for the implementation of the provisions of Article 2.18 during Stage 1 pre-determined the impact of the implementation of the same provisions during Stage 2, the TMB recommends to the CTG that the Council:

- recall that, pursuant to the provisions of Article 2.18, for small suppliers whose exports are subject to restrictions, meaningful improvement in access shall be provided for the duration of the ATC implementation;
- invite the Members concerned, notwithstanding the methodology applied by them during Stage 1 for the advancement by one stage of the respective growth rates defined by the ATC, to make every effort possible to ensure that meaningful improvement in access for the exports of small suppliers be provided during Stage 3;

- recall to the same Members that the possibility of providing "at least equivalent changes as may be mutually agreed with respect to a different mix of base levels, growth and flexibility provisions" can still be used in order to provide meaningful improvement in access;

- recall also that all such improvements shall be notified to the TMB.

(c) Cotton-producing exporting Members

705. Based on the considerations and views reported in Section D of Chapter X, the TMB recommends to the CTG that the Council:

- recall that, in accordance with the provisions of Article 1.4, the particular interests of the cotton-producing exporting Members should, in consultation with them, be reflected in the implementation of the provisions of the ATC;

- encourage Members concerned to enter into consultations with a view to clarifying the issues related to the implementation of the above and recall that, should the need arise, the provisions of Article 8.4 are available for the purpose of initiating such consultations;

- invite Members to consider the possibility that in notifying measures taken under different provisions of the ATC, it should be also indicated, if applicable, how the provisions of Article 1.4 have been reflected in the implementation of the measures in question.

7. Autonomous Industrial Adjustment and Increased Competition in Members' Markets

706. While Article 1.5 states 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", the ATC does not require Members to provide notifications or information on developments in this area. In reply to the request for information by the TMB, five Members provided some information in this regard. All these replies are reflected in full in Section A of Chapter XI of this report, together with some comments offered by a group of Members. The replies provided have enabled the TMB to make a few observations, but it 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, have been achieved. While some progress may have already been reported, it would appear that there is a continuing need for adjustment in order to ensure the smooth transition from the ATC to the GATT 1994 regime.

707. On the basis of the above, the TMB recommends to the CTG 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.

8. Regional Arrangements and Initiatives

708. The ATC does not contain any provision regarding regional arrangements and initiatives, since these are covered, to the extent applicable, by provisions of the WTO Agreement and other applicable Multilateral Trade Agreements. However, against the background of certain perceptions that many developments in textiles and clothing trade during the ATC implementation have been related to regional arrangements and initiatives, the TMB briefly addressed this issue, on the basis of the limited statistical information available to it. An important conclusion of the TMB's brief overview was that the issue of potential effect of regional arrangements and initiatives should be approached and assessed with the necessary caution. Regional arrangements represent an undeniably important phenomenon in trade in textile and clothing products and, in all likelihood, this will also continue to be the case in years to come. In certain cases (offshore assembly operations), these trade flows can also be viewed as part of the ongoing adjustment process. To the extent that one can rely on available statistical data, regional arrangements, in most cases, have the effect of increasing the share of reciprocal trade between the parties in the overall trade of the Members concerned. Therefore, such trade flows could have implications for the trading opportunities of those Members which do not form part of the regional arrangements concerned. However, it could be also noted that, in some cases, the increased trade with preferential partners was achieved not at the expense of imports from other restrained Members, but rather caused loss in market share of some other (developed) suppliers. In any event, the lack of sufficiently detailed and specific information does not allow more far-reaching conclusions to be drawn at this stage. It is also noteworthy that, in some cases, the regional (preferential) trade flows cannot be captured on the basis of data regarding global trade flows. Moreover, no information has been provided up to now (not only to the TMB, but to the WTO system as a whole) on certain regional initiatives whose implementation have already commenced.

709. In light of the above, the TMB recommends to the CTG that the Council:

- note that regional arrangements and initiatives represent an aspect that should be taken into consideration in analyzing trade effected in textile and clothing products;

- invite Members to provide the necessary notifications and/or information to appropriate WTO bodies, including the TMB, on any new regional arrangement or initiatives (involving trade in ATC products).

9. Elimination of Restrictions on Imports from Certain Non-WTO Members

710. The TMB noted that several Members had pointed out that there had been "numerous instances in which quota restrictions on non-WTO Members had been eliminated while keeping them in place for WTO Members". In the view of these Members, such actions are inconsistent with the MFN principle (Article I of GATT 1994) and with Article XIII of GATT 1994 and as a result of such actions, the balance of rights and obligations under the ATC is lost, since Article 1.6 provides that the rights and obligations of Members under the provisions of the WTO Agreement and the Multilateral Trade Agreements shall not be affected by the provisions of the ATC unless otherwise provided in the Agreement itself.

711. The TMB also noted that, in the view of the European Community, its agreements with non-WTO Members "do not fall under the purview of the TMB" and they are not "relevant to the TMB's review of the second stage of integration as foreseen by Article 8.11 of the ATC". The European Community also stated that these arrangements were designed to foster improved trade relations, and in particular improved access in the textiles and clothing sector for both parties. They, therefore, promoted trade liberalization within the context of mutually beneficial arrangements.

712. Reflecting on the above views, the TMB briefly addressed different aspects of the arguments made. With regard to the concerns expressed above in this regard, the TMB noted that it 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, however, that none of the provisions of the ATC, including its Article 1.6, authorized the TMB to pronounce itself on whether rights and obligations of Members had been affected, or not, under the provisions of GATT 1994.

713. In these circumstances the TMB recommends to the CTG that the Council:

- note the views and concerns expressed by Members as reflected above;
- reflect further, if it deems appropriate, on these issues.

10. Compliance with Notification Requirements Under the ATC. Cooperation by Members in Responding to Requests Made by the TMB. Members Own Initiative to Provide Information on Matters Affecting the Implementation of the ATC or Referring Matters to the TMB

714. As reflected in this report, WTO Members' compliance with time-bound notification obligations under the ATC has not improved, rather it has further deteriorated over time. As a result, an increasing number of Members has not provided any notification when such notifications were due and there has also been an increase in the number of late notifications. The TMB 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.

715. It is an equally serious concern to the TMB that, in a number of specific cases, despite its repeated requests for clarifications, precisions, additional information from the Members concerned, no reply was provided. The TMB reiterates that full cooperation from Members has been and continues to be indispensable to enable the TMB to review or to facilitate its task of examining, under the applicable provisions of the ATC, all the measures taken under the ATC and of reaching appropriate conclusions on their conformity therewith. Continued failure to provide information and clarifications has hampered the TMB's ability, in these cases, to discharge its functions in accordance with the requirements of the ATC.

716. There were a few instances when Members took certain measures allegedly under the ATC, but no notification or information was provided by them to the TMB. There were and continue to be cases when the Members concerned considered that a particular measure taken did not fall under a particular provision of the ATC and that, therefore, it should not be notified at all. However, it would appear that such measures were related to trade in products covered by the ATC and could have an effect on the ATC implementation. Therefore, at the minimum, for transparency purposes, such measures should be either notified to the TMB or brought to its attention in the form of appropriate information.

717. Some of the information and comments provided by Members, in reply to the TMB's request, made in the context of the 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. While the TMB appreciates all the contributions received and has decided to reflect them as fully as possible in the relevant parts of this comprehensive 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.

718. All the above highlight the fact that the efficient functioning of the TMB and its supervisory role under the ATC is also dependent on the cooperation of Members and on their attitude in referring issues which can adversely affect their rights and trading interests under the ATC to the TMB.

719. The TMB recommends 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.

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