

UNITED STATES - MEASURES AFFECTING IMPORTS OF
WOVEN WOOL SHIRTS AND BLOUSES

Request for the Establishment of a Panel

Communication from India

The following communication, dated 14 March 1996, from the Permanent Mission of India to the Permanent Mission of the United States is circulated in accordance with Article 1.2 of the DSU and Article 8.10 of the ATC.

1. The Government of India received a request for consultations regarding imports of Category 440 (woven wool shirts and blouses) from the Government of the United States of America on 30 December 1994 under paragraphs 19 and 20 of the "Agreement between the Government of India and the Government of the United States of America concerning Trade in Textiles and Textile Products" (Bilateral Textile Agreement) which had been in operation under the aegis of the Arrangement Regarding International Trade in Textiles (MFA).

2. Delegations of the two countries met in Geneva on 18-19 April 1995 to discuss certain textile issues of mutual interest including the request for consultations on Category 440 issued on 30 December 1994. Even as the Indian Delegation was explaining to the United States Delegation at Geneva on 18 April 1995 the legal unsustainability of pursuing a request for consultations issued under the old Bilateral Textile Agreement which had ceased to operate by 31 December 1994, and the anomalies and inconsistencies with reference to the provisions of the Agreement on Textiles and Clothing (ATC) that could arise if the calls issued under the old bilateral textile agreement were pursued and acted upon after coming into force of the new multilateral agreement on textiles, namely, the ATC, a fresh request for consultations was made by the Government of the United States through the Embassy of India in Washington D.C. in respect of the same category (Category 440) under Article 6 of the ATC and copies of the statements of "serious damage" annexed to the request for consultations were handed over to the Indian Delegation on the same day in Geneva. On 19 April 1995, the United States Delegation provided certain clarifications to the Indian Delegation on these new statements of "serious damage".

3. On the basis of the fresh request for consultations issued by the Government of the United States under Article 6 of the ATC in respect of Category 440 on 18 April 1995, bilateral consultations were held in Washington D.C. on 14-16 June 1995. During these consultations the Indian Delegation pointed out that while the note verbale of the United States Government conveying their request for consultations referred to "serious damage or actual threat thereof" to United States industry without indicating clearly whether the United States had determined the situation to be one of "serious damage"

or "actual threat", the statement accompanying the note verbale consistently referred to "serious damage". During these bilateral consultations, the Indian Delegation, on the basis of data furnished along with the request for consultations, and other figures published by United States Government agencies having a relevance for the request for consultations, pointed out that there was no justification for any action under Article 6 of the ATC in respect of Category 440. However, the United States Delegation refused to accept this position and subsequently (i.e. on 14 July 1995) established a unilateral restraint on imports in Category 440 from India with retrospective effect, i.e. with effect from 18 April 1995.

4. As required under paragraph 10 of Article 6 of the ATC, the Textiles Monitoring Body (TMB) examined the matter at its Third and Fourth Meetings on 28 August - 1 September 1995 and 12-15 September 1995. The Indian Delegation made a detailed presentation to the TMB on all the relevant parameters referred to in Article 6 of the ATC and also provided answers to the questions put by the TMB members. During the presentation, India had pointed out, by analyzing the data provided by the United States and by using the data published by United States authorities, that the United States had not discharged its burden of proving serious damage or actual threat of serious damage to United States producers.

5. The TMB subsequently issued a report of the Third and Fourth meetings which, *inter alia*, covered its examination under Article 6.10 of the ATC of the United States action in respect of Category 440 imports from India (Document No. G/TMB/R/3 dated 3 October 95). Paragraph 26 of this report reads as follows:

"During its review under paragraphs 2 and 3 of Article 6, of the safeguard action taken by the United States against imports of Category 440 from India, the TMB found that the actual threat of serious damage had been demonstrated, and that, pursuant to paragraph 4 of Article 6, this actual threat could be attributed to the sharp and substantial increase in imports from India".

6. The above-mentioned report of the TMB did not give any indication as to whether the TMB had considered the claim of United States regarding "serious damage", and if so, the result of such a consideration. The report also did not give any indication about the criteria applied by the TMB in order to come to a conclusion about the existence of "actual threat".

7. On 16 October 1995, the Government of India sent a communication to the TMB under Article 8.10 of the ATC conveying its inability to conform with the recommendations of the TMB and explaining the reasons for such inability. This communication was circulated as document No. G/TMB/SPEC/118 dated 17 October 1995. In this communication, India had, *inter alia*, pointed out that the criteria for determining an actual threat of serious damage had not been considered by the TMB during its earlier examination under Article 6.10 of the ATC and that a view was also not taken about the question of retroactive application of the restraint level. On the factual side India had referred to the absence of data as well as the inadequacy or infirmity of the data presented by the United States with regard to several factors referred to in Article 6 of the ATC and reiterated its conviction that United States producers of woven wool shirts and blouses did not face a situation of "actual threat of serious damage".

8. The TMB reviewed this matter at its Seventh Meeting on 13-17 November 1995 during the course of which it considered the written submission made by India through its communication dated 17 October 1995 and oral presentation made before the TMB.

9. The TMB issued a report of the Seventh Meeting (Document No. G/TMB/R/6 dated 8 December 1995) which, *inter alia*, covers its examination of the communication sent by India under Article 8.10. Paragraph 14 of this report reads as follows:

"The TMB reviewed the matter referred to it by India under Article 8.10 in its letter dated 16 October 1995. The TMB heard the presentation made by India and considered the elements put forward. The Body could not make any recommendation in addition to the conclusions it had reached at its meeting on 12-15 September 1995 (G/TMB/R/3, paragraph 26). The TMB therefore considered its review of the matter completed".

10. Since the matter arising out of the request for consultations in respect of Category 440 issued by the United States on 18 April 1995 and the subsequent establishment of a restraint level in respect of this category on 14 July 1995 effective from 18 April 1995 remains unresolved in spite of:

- bilateral consultations between India and the United States held under paragraph 7 of Article 6 of the ATC in April and June 1995;
- the examination of the matter by the TMB under Article 6.10 of the ATC at its Third and Fourth Meetings in August and September 1995;
- the communication sent by the Government of India to the TMB under Article 8.10 of the ATC, within one month of recommendation under Article 6.10, explaining the reasons for its inability to conform to the recommendations made by it; and
- the review of the matter by the TMB under Article 8.10 of the ATC in its Seventh Meeting in November 1995 and the report of the TMB on this Seventh Meeting;

My Government considers that all requirements in Article 8.10 of the ATC for direct recourse to paragraph 2 of Article XXIII of GATT 1994 have been met. India therefore requests that a panel be established at the next meeting of the DSB, pursuant to Article XXIII:2 of GATT 1994, Article 6 of the DSU and Article 8.10 and other relevant provisions of the ATC.

11. India requests that the panel consider and find that:

1. The restraint introduced by the United States on 14 July 1995 on imports of Category 440 (woven wool shirts and blouses) from India effective from 18 April 1995 is inconsistent with Articles 6, 8 and 2 of the ATC.
2. The action of the United States in imposing the restraint on imports of Category 440 from India nullifies or impairs the benefits accruing to India under the WTO Agreement, and under GATT 1994 and the ATC in particular.
3. The Government of the United States should bring the measure into conformity with the ATC by withdrawing the restraint imposed by them on imports of Category 440 from India.

12. India also requests a supplementary finding by the panel that:

- (i) According to the ATC, notably Article 6, the onus of demonstrating serious damage or its actual threat is on the United States, as the importing country. It has to choose at the beginning of the process whether it will claim the existence of "serious damage" or "actual threat". These are not interchangeable because the data requirement would vary with the chosen situation. It would not be valid to transfer a transitional safeguard to a situation of actual threat when the claim of serious damage has failed to gain acceptance.

- (ii) There is no provision in the ATC under which the United States, as the importing country, can impose a restraint with retrospective effect.

13. India requests that the panel be established with standard terms of reference as set out in Article 7 of the DSU.

14. India further requests that this request for the establishment of a panel be inscribed on the agenda of the next meeting of the DSB scheduled for 27 March 1996 and be circulated to all WTO Members.