

WORLD TRADE ORGANIZATION

RESTRICTED

W/DS32/1

15 March 1996

(96-0970)

Original: English

UNITED STATES - MEASURES AFFECTING IMPORTS OF WOMEN'S AND GIRLS' WOOL COATS

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 and to the Dispute Settlement Body, 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 435 (women's and girls' wool coats) 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 435 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 the 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 435) under Article 6 of the ATC, and copies of the statement 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 435 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 435. 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 435 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 analysing 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 its 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 United States action in respect of Category 435 imports from India (Document No. G/TMB/R/3 dated 3 October 1995). Paragraph 19 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 435 from India, the TMB found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB could not, however, reach consensus on the existence of actual threat of serious damage. When reviewing the implications of the discussions in the TMB and the Body's finding in this matter, the parties should keep in mind the fact that the Agreement is silent as to whether the import restraint can continue to be maintained".

6. The Government of India had hoped that the finding arrived at by the TMB in its Third and Fourth meetings would result in withdrawal of the restraint by the United States. As this did not happen, on 17 October 1995, the Government of India sent a communication (Document No. G/TMB/SPEC/119) to the TMB under Article 8.6 of the ATC, without prejudice to its rights under the WTO Agreement, drawing the attention of the TMB to the continuation of the restraint on Category 435 imports from India into the United States. In this communication, India pointed out that Article 6 of the ATC in its general thrust envisaged that transitional safeguard measures could continue to exist and be treated as justified only with the endorsement of the TMB. The absence of a consensus was indicative that the action under examination had not been determined to be justified and thus, lacking in justification, was not valid under the provisions and conditions set forth in Article 6 of the ATC. In this communication, India also highlighted a number of points it had made at the time of the examination by the TMB under Article 6.10 of the ATC, which had demonstrated clearly on the basis of data published by United States Government sources that there was no serious damage or actual threat of serious damage to the domestic producers of Category 435 in the United States.

7. 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.

8. The TMB issued a report of the Seventh Meeting (Document No. G/TMB/R/6 dated 8 December 1995) which, *inter alia*, covered its examination of the communication sent by India under Article 8.6 of the ATC. Paragraph 9 of this report reads as follows:

"The TMB reviewed the matter referred to it by India under paragraph 6 of Article 8 in its letter dated 17 October 1995. The TMB heard the presentation by India, and considered the elements put forward. The Body could not make any recommendation in addition to the conclusions it had reached at its meeting on 12-15 September 1995, (G/TMB/R/3, paragraph 19), nor could the TMB reach a consensus on whether or not the restraint on Category 435 could continue to be maintained in light of the absence of consensus on the existence of actual threat of serious damage. The TMB therefore considered its review of the matter under the relevant provisions of the ATC completed."

9. Since the matter arising out of the request for consultations issued by the United States on 18 April 1995 to India in respect of Category 435 and restraint imposed by the United States on India's exports of Category 435 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 in October 1995, without prejudice to its rights under the WTO Agreement, to the TMB under Article 8.6 of the ATC regarding continuation, by the United States, of the restraint on Category 435 imports from India into the United States notwithstanding the absence of a TMB recommendation upholding the safeguard action taken under Article 6 by the United States; and
- the review of the matter by the TMB 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.

10. 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 435 (Women's and girls' wool coats) from India effective from 18 April 1995 is inconsistent with Article 6, 8 and 2 of the ATC.
2. The action of the United States in imposing the restraint on imports of Category 435 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 action of the United States in continuing with the restraint on Category 435 is also unjustified in the light of the TMB's finding that serious damage has not been demonstrated and in the light of absence of consensus in the TMB on the existence of actual threat of serious damage.

4. 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 435 from India.
11. India also requests a supplementary finding by the panel that:
 - (i) Absence of a clear recommendation by the TMB upholding the safeguard action taken by the United States implies that the TMB does not find the safeguard action justified and therefore the importing country has a legal obligation to withdraw the restraint.
 - (ii) According to the ATC, notably its Article 6, the onus of demonstrating serious damage or actual threat is on the United States as the importing country. The United States therefore had to choose at the beginning of the process whether it will claim the existence of the serious damage or actual threat. These are not interchangeable because the data requirement would vary with the chosen situation.
 - (iii) There is no provision in the ATC under which the United States as the importing country can impose a restraint with retrospective effect.
12. India requests that the panel be established with standard terms of reference as set out in Article 7 of the DSU.
13. 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.