

Textiles Monitoring Body

REPORT OF THE TWENTY-SEVENTH MEETING

1. The Textiles Monitoring Body held its twenty-seventh meeting on 10 to 12 and 24 March 1997.
2. Present at this meeting were the following members and/or alternates/second alternates, and observers: Mrs. Dwarka-Canabady; Messrs. Malik/Lam; Mukerji/Ms. Shahin; Miss Orozco Jaramillo/Messrs. Da Costa e Silva; Rey/Zapedowski/Urkan; Richards; Saeki; Wentzel; Tadpitakkul; Tagliani; Tong/Kim.
3. The TMB adopted the report of its twenty-sixth meeting (G/TMB/R/25).

Notification under Article 2.1 of the Agreement on Textiles and Clothing (ATC)

4. The TMB took note of an addition made by the United States, following Bulgaria's accession to the WTO, to its notification under paragraph 1 of Article 2 (G/TMB/N/63/Add.9). This notification was made in accordance with the relevant provisions included in the Report of the Working Party on the Accession of Bulgaria to the WTO, according to which "...the quantitative restrictions maintained by WTO Members on imports of textiles and clothing products originating in Bulgaria that are in force on the date prior to the date of the accession of Bulgaria to the WTO shall be notified to the Textiles Monitoring Body (TMB) as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing. [...] To these base levels the increase in growth rates provided for in Articles 2.13 and 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, from the date of accession of Bulgaria to the WTO" (WT/ACC/BGR/5, paragraph 48). The TMB understood that the growth rates in this notification would be increased annually in accordance with paragraphs 13 and 14 of Article 2 of the ATC.

Notifications under Articles 2.8(a) and 2.11 of the ATC

5. In addition to the review it had started at previous meetings (G/TMB/R/23, paragraph 6 and G/TMB/24, paragraph 6), the TMB also began its review under paragraph 21 of Article 2 of the programmes of integration notified pursuant to paragraphs 8(a) and 11 of Article 2 by some other Members, and, seeking further information and clarification from some of them, decided to revert to its review at a subsequent meeting. In the meantime, pursuant to paragraph 11 of Article 2, the TMB is circulating these additional notifications to WTO Members.

Notifications under Article 2.17 of the ATC

6. The TMB started its review of administrative arrangements notified by the United States pursuant to paragraph 17 of Article 2 and decided to revert to this review at a subsequent meeting.

Notification under Articles 8.5 and 4.2

7. The TMB took note of a communication received from the Philippines that, in view of a mutually agreed solution between the Philippines and the United States, it requested that the matter it had raised,

pursuant to paragraphs 5 of Article 8 and 2 of Article 4, regarding changes in the United States' rules of origin, should be removed from the TMB's agenda of its twenty-seventh meeting. This was without prejudice to the Philippines' rights under the ATC, in particular under its Article 8.

Notification under Article 8.10 of the ATC

Hong Kong/Brazil: imports of woven artificial filament fabrics (category 618)

8. The TMB received a communication from Hong Kong under paragraph 10 of Article 8, related to the safeguard measure introduced by Brazil pursuant to paragraph 11 of Article 6 of the ATC on imports of products of category 618 (woven artificial filament fabrics) from Hong Kong. The measure had been introduced with effect as from 1 June 1996. Bilateral consultations had taken place between Brazil and Hong Kong pursuant to paragraph 11 of Article 6 and had been inconclusive. Both Members had notified this outcome to the TMB within the deadline envisaged in paragraph 11 of Article 6. The TMB had examined this matter at its meetings on 9 to 11 September and 4 to 6 November 1996, and the TMB's observations, findings and recommendations had been made available to WTO Members in a note by the TMB's Chairman dated 8 November 1996 (G/TMB/9). The full report of the TMB's review of this matter had been circulated in documents G/TMB/R/16 and G/TMB/R/20. The TMB had subsequently taken note, at its meeting on 17 to 19 December 1996, of a communication received from Brazil that "in accordance with paragraph 9 of Article 8 of the ATC, the Brazilian Government shall endeavour to accept in full the recommendations of the TMB concerning transitional safeguards applied to imports of category 618 (woven artificial filament fabrics) [...] from Hong Kong, contained in document G/TMB/9". The Government of Brazil also "reserved its rights under paragraph 12 of Article 6 of the ATC in relation to such recommendations" (G/TMB/R/22, paragraph 11).

9. Hong Kong's communication under paragraph 10 of Article 8, received by the TMB within the time-frame envisaged in this paragraph, conveyed Hong Kong's inability to conform with the recommendation the TMB had made, which allowed for the restraint to remain in place at latest until 31 December 1997. The reasons given by Hong Kong in its communication were:

- that a determination of serious damage should not be made almost entirely by reference to inappropriate factual data, i.e. data relating to a much broader industry than the particular industry in respect of which damage was claimed;
- that even if the TMB considered that the factual data provided by Brazil for the broader industry were relevant to the industry manufacturing woven fabrics of artificial filament yarn (despite the marked disparity in sizes of different industries covered by the factual data), the TMB should have taken into consideration that the industry manufacturing woven fabrics of artificial filament yarn had performed much better than the broader industry, as was evident in such data relating to, *inter alia*, output and production capacity; and
- that even if it had been considered proper for the TMB to find by inference that the industry manufacturing woven fabrics of artificial yarn had been suffering damage, the causal relationship of such damage found by inference and increased quantities of imports had not been reviewed by the TMB.

Hong Kong, therefore, requested the TMB to re-consider the matter in the light of these reasons, and to issue revised recommendations.

10. Due to scheduling problems of the requesting Member, the TMB could not start to review this matter before its meeting on 24 to 26 February 1997. At the invitation of the TMB, Hong Kong and Brazil sent delegations to the TMB's review.

11. During this meeting, the representative of Hong Kong stated that his authorities were unable to conform with the TMB recommendation for the following main reasons:

- Brazil had failed to fulfil its obligations under paragraph 3 of Article 6 of the ATC to examine the relevant economic variables specific to the particular industry (i.e. the category 618 industry) in respect of which Brazil had claimed to have found serious damage and had failed to provide the data required under sub-paragraph (a) of the second sentence of paragraph 7 of Article 6 of the ATC;
- in terms of principle, it was inappropriate for the TMB to make a determination of serious damage based almost entirely on data relating to various much broader industries than the particular industry;
- principle apart, considering that, as could be deduced from productivity, output and employment data submitted by Brazil, the category 618 industry represented only 0.5 per cent to 1 per cent of those broader industries, there were no economic or statistical grounds for the TMB to draw inferences from the data provided for such much broader industries;
- even if the TMB considered that the Brazilian data provided for the broader industries were relevant to Brazil's category 618 industry, the TMB should have taken into consideration that Brazil's category 618 industry had performed better than the broader industries, as was evident from the data relating to output and capacity utilization;
- given the fact that the TMB had concluded that Brazil's category 618 industry was suffering serious damage by inference from data relating to broader industries, the TMB should have proceeded to examine the cause of this damage to the broader industries, i.e. whether it was due to technological changes or changes in consumer preference, before determining whether the inferred damage to the category 618 industry could be attributed to Hong Kong.

12. The representative of Brazil questioned whether it was Hong Kong's view that the data provided by Brazil referred to a different industry from the one that Brazil claimed it needed protection. He noted that for industries producing different lines of products, the accounting rules in most countries did not call for providing data such as those referred to in paragraph 3 of Article 6 of the ATC for each and every line of product. In such cases, should estimates be used, or should no data at all be provided? He questioned whether the assessment of the variables mentioned in paragraph 3 of Article 6 should be quantitative or qualitative and whether, when one of the elements showed a marginal improvement, this would cancel out the other elements which showed a sharp deterioration. If the assessment of the existence of serious damage should be circumscribed to that portion of the industry producing products of category 618, the effects of imports should be assessed with respect to this segment of the industry as well. He asked whether Hong Kong was of the view that technological changes had taken place with respect to category 618, and would explain such a large increase in imports. The representative of Brazil also questioned whether it was Hong Kong's view that an investment in the Brazilian industry producing products of category 618 would be a sound one.

13. The TMB began a thorough consideration of the reasons and arguments put forward by Hong Kong, as well as of the comments and clarifications provided by Brazil, and, in view of the complexity of the matter, decided to revert to it, and conclude its consideration at its next meeting.

14. The TMB recalled that, in accordance with paragraph 10 of Article 8, it was required to give thorough consideration to the reasons given by the Member which considered itself unable to conform

with its recommendations, and issue any further recommendations it considered appropriate forthwith. The TMB noted that, in its statement before the TMB and in replies to questions, Hong Kong had provided further clarification with respect to the fundamental question it had requested the TMB to review, i.e. whether a determination of serious damage can be made almost entirely by reference to data relating to much broader industries than the particular industry in respect of which damage was claimed.

15. The TMB also recalled that Brazil had, at the time it requested consultations, provided information to Hong Kong with respect to all the economic variables referred to in paragraph 3 of Article 6, on which Brazil had based its determination of the existence of serious damage. This information had also been made available to the TMB. The TMB noted that Hong Kong had rightly pointed out, as the TMB had also observed during its review of the measure (G/TMB/R/20), that some of the data presented by Brazil related to a broader industry than that for which the damage was claimed. The TMB noted that during the examination of the matter in September and November 1996, Hong Kong had indicated that, during bilateral consultations, it had sought more specific information from Brazil with respect to some of these economic variables. Brazil had explained that no such specific data were available. The TMB further noted that during that examination of the matter, Hong Kong had argued against the justification of the measure by reference to all the data provided by Brazil including those which were related to a broader industry than the category 618 industry itself. In its presentation, Hong Kong's comments regarding the quality of the data provided by Brazil had focused primarily on the lack of up-to-date information and on the absence of data series for several years, that would make it possible to identify trends.

16. The TMB, while recalling that paragraph 10 of Article 8 did not provide any express guidance on the reasons which can be given by a Member for its inability to conform with the recommendations of the TMB, noted that in this particular case the key reasons identified by Hong Kong for its inability were based on arguments which had already been available, but had not been presented by Hong Kong as a central issue, during the Body's examination under the provisions of Article 6 of the safeguard measure.

17. The TMB recalled that the issue of the specificity of the information to be provided to the WTO Member affected by the WTO Member taking an action pursuant to Article 6, at the time consultations were sought, had been an important aspect in the TMB's consideration of this matter under paragraph 11 of Article 6. During its review of the case in September and November 1996 the TMB, "while noting the efforts made by Brazil to provide Hong Kong with data as relevant and up-to-date as possible at the time of the request for consultation and during the consultations, observed that some of the data presented by Brazil related to a wider segment of production than that of category 618 (woven artificial filament fabrics)."¹

18. Turning to the detailed reasoning presented by Hong Kong pursuant to paragraph 10 of Article 8, the TMB noted that, in the view of Hong Kong, Article 6 of the ATC required that at least all the economic variables mentioned in paragraph 3 of that Article should be examined by the importing Member, for the particular industry, in making its determination of the existence of serious damage, or actual threat thereof. The TMB noted in this regard that Brazil had explained that it had examined all the economic variables mentioned in paragraph 3 of Article 6 before making its determination of the existence of serious damage. Hong Kong had further argued that the second sentence, sub-paragraph (a) of paragraph 7 of Article 6 of the ATC suggested that all the factual information provided by the importing Member had to be specific to the particular industry, and that Brazil had been deficient in fulfilling this provision, since it had provided data specific to the particular industry

¹G/TMB/20, paragraph 8.

only with respect to four of the economic variables. In the view of the TMB, it followed from the structure of Article 6 of the ATC that all the factual information that had been examined in pursuance of paragraph 3 of that Article had to be communicated by the importing Member to the Member or Members affected by the action, and to the TMB, since this was the basis for bilateral consultations and for the TMB's subsequent consideration of the matter. The TMB also noted that Brazil had provided information with respect to the eleven economic variables, among which data were specific to the particular industry with respect to four of such variables, as well as on import prices, a variable not mentioned in paragraph 3 of Article 6. Hong Kong furthermore questioned the TMB's reference to the third sentence of paragraph 7 of Article 6 (paragraph 8 of G/TMB/R/20), since the terms "segment of production" used in paragraph 7 of Article 6 should, in Hong Kong's view be interpreted as having a different meaning from the term "particular industry" in paragraph 3 of the same Article. Therefore, in Hong Kong's view, the data not specific to the woven artificial filament fabric industry were not relevant for meeting the requirements set out in paragraph 3 of Article 6, and it was inappropriate for the TMB to draw inferences from such data. The TMB noted that a careful consideration of these arguments would imply, *inter alia*, that the Body would have to pronounce itself on issues which would require the adoption of more general interpretations of the ATC.²

19. Hong Kong had further stated that the "particular industry" was so small, relative to the broader industries for which data were provided, that no valid inferences regarding the "particular industry" could be drawn from this data. The TMB took note of the reasoning and of the deduction made by Hong Kong for calculating the relative size of the "particular industry", which was based in part on the data related to these broader industries; such deductions could, therefore, only be valid provided certain assumptions were made. The TMB also noted, however, that Brazil had provided additional indications regarding the size of production of category 618 relative to the size of the broader industry producing artificial and synthetic fabrics, which confirmed to a large extent the deductions made by Hong Kong.

20. The TMB, recalling that though it had paid particular attention during its review of the matter pursuant to paragraph 11 of Article 6 to the issue of the specificity of information, recognized that the relationship between the size of category 618 and the size of the broader industry referred to by Brazil in some of the data provided might not have been perceived in its full magnitude.

21. In the context of the relationship between the "particular industry" and the broader industries Hong Kong had stated that, during the examination of the matter pursuant to paragraph 11 of Article 6, the TMB had considered that only one economic factor specific to category 618 (domestic prices) indicated that the Brazilian industry was suffering damage; another (output) was an indication to the contrary, while the decrease in market share and the increase in the relatively low volume of exports were inconclusive. In the view of Hong Kong, four other economic factors (utilization of capacity, employment, profits and investment) indicated, for the TMB, that damage was being suffered, while productivity, inventories and wages were considered not to support such a conclusion, all these data being related to much broader industries than Brazil's woven artificial filament fabric industry. Thus, in the view of Hong Kong, the TMB presumably had based its acceptance of serious damage to the category 618 industry almost entirely by inappropriate inferences it had drawn from data related to much broader industries.

²Paragraph 2 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization states that "the Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement".

22. The TMB observed that, in addition to imports, Brazil had provided information specific to category 618 with respect to output, market share, exports, domestic prices and import prices; that it had provided information relative to a broader industry with respect to productivity, utilization of capacity, wages, employment, profits and investments; information regarding inventories was not considered by Brazil to be relevant in this case. Thus, some important data and factual information provided by Brazil was category-specific. The TMB also recalled that, in assessing one-by-one the developments in particular economic variables, it had kept in mind the lack of specificity of some of the data and also the relevant provisions of the ATC according to which none of the relevant economic variables, either alone or combined with other factors, can necessarily give decisive guidance in making a determination of serious damage. The TMB could not share the view of Hong Kong that the Body had considered during its review of the measure under paragraph 11 of Article 6 that the decrease in the share of the domestic market held by Brazilian manufacturers was inconclusive in assessing the state of the Brazilian industry. While noting that "the share held by domestic manufacturers had gone down from 64 to 35 per cent", it had not only observed that "the ATC does not provide for guaranteed market shares" (G/TMB/R/20, paragraph 10), but also stated that "the data provided an unambiguous indication that the industry had been unable to take advantage of the substantial increase in its domestic market. Part of the strength of the domestic demand could be attributed to the implementation of the economic stabilization programme, and in particular to the liberalization of imports undertaken by Brazil during the last decade. Adjustment efforts had been undertaken, which had not enabled the Brazilian industry to compete successfully with imports, in particular given the price levels prevailing in the Brazilian market" (G/TMB/R/20, paragraph 20).

23. Consequently, while the TMB did not disagree with the arguments of Hong Kong regarding the relative size of the industry producing category 618 products, it could not accept the contention that "since, as regards the data specific to Brazil's woven artificial filament fabric industry, the TMB noted one positive factor (output) and one negative economic factor (domestic prices)", the TMB had "presumably based its acceptance that serious damage to Brazil's woven artificial filament fabric industry could be demonstrated on the inferences it drew from data related to much broader industries".

24. The TMB observed that the additional reasons given by Hong Kong for its inability to conform with the recommendation of the Body assumed that the TMB's determination of serious damage had been based almost entirely on findings drawn by inferences from, and the unconditional acceptance of the relevance of, data relating to a broader industry. As the assumptions underlying these arguments had not been confirmed by the Body (see paragraph 23 above), the TMB was of the view that it was not necessary to address these reasons in substance.

25. In summing up the consideration it had given to the reasons presented by Hong Kong, the TMB agreed that in case of recourse to Article 6, it was important to provide as much factual information and data as possible that was specific to the product category itself, as product-specific information and data should have a major impact on the overall assessment whether serious damage or actual threat thereof could be demonstrated.

26. In this regard and with respect to the particular case before it, it was the understanding of the TMB that Hong Kong did not disagree with it in accepting that it had not been possible for Brazil to provide category-specific information and data with respect to each and every economic variable envisaged in paragraph 3 of Article 6. The TMB held the view that in such a case and in respect of such variables, if factual information and data that related as closely as possible to the product category itself were examined, these information and data had also to be submitted to the Member to which the request for consultations was addressed, as well as to the TMB.

27. In the context of the above the TMB noted that, in the view of Hong Kong, the ATC required that only information and data specific to the "particular industry" could be examined in making a

determination of serious damage to the domestic industry. The TMB recalled that it had declined to pronounce itself on issues which would require the adoption of more general interpretations of the ATC (see paragraph 18). The TMB also recalled its observation of the importance of product-specific information and data (see paragraph 25). In respect of the above, the TMB noted that it was not a part of Hong Kong's contention to request the Body to conduct a *de novo* examination with a view to establishing whether serious damage in this particular case could be determined exclusively on the basis of the economic variables for which category-specific information had been provided.

28. As follows from the TMB's observations reflected in particular in paragraphs 17, 20, 22, 23 and 25 above, the Body agreed with Hong Kong's main contention according to which a determination of serious damage could not be made almost entirely by reference to, and therefore by inferences drawn from, data relating to much broader industries in respect of which damage is claimed. On the other hand, in carefully considering its examination of the particular case (i.e. the Brazilian measures against imports of category 618 products from Hong Kong), the TMB could not reach the same conclusions as Hong Kong did, since in this case the determination of serious damage had not been made almost entirely by reference to data relating to such broader industries, as some important data and factual information provided by Brazil were category-specific.

29. The TMB recognized, however, that certain formulations of its report on the examination of this matter pursuant to paragraph 11 of Article 6 could be read so as to lead to slightly divergent conclusions, which could be different from the statement contained in the preceding paragraph. This applied in particular to paragraphs 20 and 21 of the report (G/TMB/R/20). The reference in the report to the fact that the TMB, with respect to some variables, had to rely on arguments by inference in view of the lack of specific data relating the category itself, was aimed at indicating the serious limitations that the Body had in drawing reliable conclusions on the basis of data which were related to broader industries than to the category 618 industry.

30. The TMB recalled that it had already expressed concerns with respect to some of the non-category specific data provided by Brazil, which had made it difficult to assess the extent to which developments in some economic variables could be attributed to the evolution of the market in category 618 products. While in light of the conclusions reached in paragraphs 18, 23, 27 and, in particular, 28 above, the TMB did not consider it appropriate to revise its recommendations adopted in November 1996 or to issue further recommendations, the Body recalled that it had observed that there were indications to the effect that the Brazilian industry producing products of category 618 had already been undertaking important restructuring and adjustment. The TMB, therefore, expected Brazil to keep the developments of the market of category 618 products under review, and recalled that it had recommended to Brazil that the measure taken against imports from Hong Kong of products of category 618 should be rescinded at latest by 31 December 1997.

Preparation for the 1997 Comprehensive Report under Article 8.11

31. The TMB decided to request the WTO Secretariat to provide Members with background statistical information with respect to trade in textiles and clothing, in time for the major review to be conducted by the Council for Trade in Goods, pursuant to paragraph 11 of Article 8, before the end of 1997. It also started a preliminary discussion on the possible structure of its comprehensive report.

32. The TMB agreed to send to WTO Members, in the early part of April 1997, a reminder of the request for information it had sent on 14 February 1997 (G/TMB/11).