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Council for Trade in Goods

26 October 2001

MINUTES OF THE MEETING

Held in the Centre William Rappard
on 26 October 2001

Chairman: Ambassador I. Major (Hungary)

1. The Chairman recalled that the major review of the implementation of the Agreement on Textiles and Clothing in the second stage had been launched by the Council on 27 September 2001. At that meeting, a list of topics for examination had been agreed, comprising four subject areas, with a number of tirets for the specific topics. The report of that meeting was available in document G/C/M/51. He also recalled that, at the second meeting, held on 17 October 2001, the Council had begun its detailed discussion on the subject areas. Specifically, the Council had addressed, in detail, a number of topics under the subject of "The Integration Process and Other Related Issues in Article 2", as well as "The Use of the Transitional Safeguard Mechanism in Article 6". It had also begun discussion of the third subject area, "Other Articles of the ATC", taking up the first two topics: (i) "Circumvention of Restrictions in Article 5", and (ii) "Abiding by GATT 1994 Rules and Disciplines, as defined by Article 7". The report on that meeting would be available in the coming days.¹

2. He said that, as agreed at the last meeting, the Council would continue discussion of the specific topics in the list, as set out in paragraph 14 of the report on the first meeting (G/C/M/51). Therefore, at the current meeting, discussion of the six remaining topics under "Other Articles of the ATC" continued. These were: (iii) Special and Differential Treatment in the ATC; (iv) Article 1.5, Autonomous Industrial Adjustment; (v) Article 1.6, Rights and Obligations of Members under WTO and MT Agreements; (vi) Article 3, Treatment of Quantitative Restrictions Other Than Those Under the MFA; (vii) Article 4, Changes in Rules and Procedures; and (viii) Article 8, Functions of the TMB.

(iii) Special and Differential Treatment in the ATC

3. The Chairman then proposed that the Council consider the topic, Special and Differential Treatment in the ATC. Among the provisions for special and differential treatment were those related to new entrants and small suppliers in Article 1.2 in relation to Article 2.18, LDCs in the footnote to Article 1.2 in relation to Article 2.18; cotton-producing, exporting Members in Article 1.4; and the special provision for small suppliers' growth-on-growth in Article 2.18.

4. The representative of Uruguay, speaking on behalf of the ITCB members that are also Members or observers of the WTO², considered that the manner in which these Members had presented the issues in their submission (document G/C/W/304) was clear and self-explanatory. He recalled that, regarding small suppliers, paragraphs 41 to 49 as well as Table 6 in their submission

¹ The report on the CTG meeting, held on 17 October 2001 is contained in document G/C/M/52.

² Throughout this report, all interventions by the representative of Uruguay are on behalf of the members of the ITCB that are also Members or observers of the WTO.

were relevant. They considered that the implementation of Article 2.18 should have been carried out in a specific manner, particularly using the method applied by the EC. He believed that the TMB had recognized this to some extent, at least in respect of the least-developed country Members. Paragraphs 50 to 58 in their document also explained their views on this question and why they believed Article 2.18 had not been implemented as it should have been. The same applied in the case of cotton-producing exporting Members in paragraphs 59 to 65 of that document.

5. The representative of Bangladesh said that he would focus not only on the footnote to Article 1.2, but also on some other provisions in favour of LDCs which were directly related to textiles and clothing trade. He expressed concern with the overall implementation of the provisions related to LDCs. Bangladesh was grateful to the TMB for its assessment on the implementation of the provisions related to LDCs. However, in his assessment of the specific provisions in the ATC, he considered it appropriate to refer to some other decisions which had important bearing on the textiles and clothing trade of LDCs, especially Bangladesh. He recalled that, at the last meeting, he had mentioned how anti-dumping duty, which in one particular case had been imposed on exports of one textile product of one Member had adversely affected Bangladesh's quota utilization rate. In this respect, paragraph 2(iv) of the Decision on Measures in Favour of Least-Developed Countries clearly stated that, "In the application of import relief measures ... special consideration shall be given to the export interests of least-developed countries". However, both in the report of the administrative reviews of this Decision conducted in 1996 and 1997 and the sunset review conducted in 1999, he had not found any reference to special consideration being given to the exports of Bangladesh as an LDC, which was supposed to be the case if Members had the desire to follow the specific provisions regarding import-relief measures. Furthermore, Bangladesh was not convinced that Article 15 of the Anti-Dumping Agreement had been taken into consideration during these reviews, but instead, anti-dumping duties had been imposed on all imports of a particular product from Bangladesh by the concerned Member. As a result, the imposition of anti-dumping duties had not only adversely affected Bangladesh's utilization of the quota, accruing under the ATC, but had also impaired its rights under the provisions of the Anti-Dumping Agreement and the Decision on Measures in Favour of Least-Developed Countries. Bangladesh requested that the CTG take note of this situation and urge that concrete actions be taken under Article 8.

6. The representative of Bangladesh then turned to other provisions related to textiles and clothing trade. Paragraph 2(ii) of the Decision on Measures in Favour of Least-Developed Countries stipulated that "MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on the products of export interest to the least-developed countries may be implemented autonomously, in advance and without staging". Six years had passed since the entry into force of the Uruguay Round Agreement and no Member had advanced its implementation of the commitments made on tariff measures in favour of LDCs. Time had passed for advancing tariff commitments and most of the commitments, except in textiles and clothing, had already been implemented on an MFN basis. With regard to non-tariff measures, the only sector where commitments had been undertaken was the textiles and clothing sector. However, no initiative had been taken so far towards increasing market access. Bangladesh considered that WTO Members had failed to give meaning to the specific provision regarding the advancing of the elimination of non-tariff measures. He considered that there was little scope for giving some meaning to this provision unless the quota-maintaining Members decided to eliminate the remaining quotas on textile and clothing exports from LDCs. If Members could not implement this provision at this time, the provisions would have no meaning because, after 2005, there would be no quotas.

7. Focusing on other provisions in favour of LDCs, the representative of Bangladesh stated that, at Marrakesh, Ministers had agreed that all provisions for special and differential treatment in favour of LDCs would be implemented expeditiously. However, Bangladesh had found that there had been no attempt to implement the provision of Article 1.2 or its footnote. He then referred to paragraph 2(iii) of the Decision on Measures in Favour of Least-Developed Countries, which stipulated that "... sympathetic consideration shall be given to specific and motivated concerns raised

by the least-developed countries in the appropriate Councils and Committees". In this respect, Bangladesh had specific concerns with regards to textiles and clothing trade in relation to the work of this Council. The textiles and clothing sector occupied a central position in Bangladesh's industry in terms of employment generation, efforts to eradicate poverty, promoting equity and empowering women. It was through this sector that Bangladesh had succeeded in making its economy outward oriented. Textiles and clothing had emerged as the single most important contributor to exports. Looking at the statistics provided in Table 13 of document G/L/474, he noted that, in Bangladesh, the share of clothing in total exports had reached 75%. The sector was vital in raising the standard of living through employment generation which was a prime objective of the establishment of the WTO, as stated in the Preamble of the WTO Agreement. Bangladesh expected that WTO Members would help LDCs to achieve their goals as stipulated in the WTO Agreement and which was being pursued by the developing country Members by taking initiatives in line with the provisions in favour of LDCs. He urged the CTG to take note of Bangladesh's concern and to take appropriate decisions so that Bangladesh could benefit from the rights provided under the Uruguay Round Agreement.

8. The representative of Hong Kong, China referring to the application of Article 2.18, recalled that considerable attention had been paid to this issue during the first major review, because only one restraining Member had interpreted "advancement by one stage of the growth rates" in Article 2.18 to mean that the growth rate that would otherwise have been applicable in Stage 2, should be advanced to apply in Stage 1. It was his contention that no other interpretation of this provision would be valid. Yet, two restraining Members had implemented Article 2.18 by substituting the growth factor applicable for Stage 1 with the growth factor applicable for Stage 2. This was clearly incorrect. Article 2.18 referred to "advancement by one stage of the growth rates" not to the advancement of the growth increase factors. The growth rate set out in Article 2.14(a), for example, which was one of the growth rates referred to in Article 2.18, that is, the growth rate during Stage 1 (i.e. including the initial 16% increase factor), increased by a further factor of 25%. Nowhere did the ATC provide for a growth rate to be arrived at by taking the pre-ATC growth rate and increasing it by 25%. Had the drafters of the ATC intended that the Stage 1 growth increase factor should be ignored in calculating this advancement, they would not have referred to Article 2.13. Another aspect of this provision was that meaningful improvement in access should be provided, not only at the entry into force of the ATC, but also for the entire duration of the ATC. Whether the non-cumulative approach, as adopted by two Members, would result in any improvement for the duration of the ATC depended on the growth factor to be applied under Article 2.18 during Stage 3. In order for the CTG to complete its review of this provision, he invited the US and Canada to inform the CTG what their intentions were as regards the application of Article 2.18 during Stage 3.

9. The representative of Guatemala also referred to Article 2.18. He thought that this was one of the most important aspects of the review, that is, ensuring full recognition by the developed country Members of the provisions in the ATC relating to access to markets for small supplier Members. On other occasions Guatemala had also emphasized the importance of the provisions to increase the possibilities for access to markets for products from small suppliers. Article 1.2 provided a clarification of how Article 2.18 should be applied, which was that Members should recognize the distinct interests of small suppliers and should permit meaningful increases in access during the different stages of integration. These provisions had not been respected and in many cases they had resulted in situations which had been critical for the development of markets in the small suppliers' exporting sectors. In fact, different criteria had been used by the restraining Members in applying the increases in growth factors and this was not in the spirit of the Agreement. Guatemala emphasized the fact that the draft Decision on Implementation-Related Issues, contained in Annex 2 of the document JOB(O1)/139, with regard to tirets 20, 21 and 25, stated "that when calculating the quota levels for small suppliers for the remaining years of the Agreement, Members will apply the most favourable methodology available in respect of those Members under the growth-on-growth provisions from the beginning of the implementation period; to extend the same treatment to least-developed countries; and, where possible, to eliminate quota restrictions on imports of such Members". He considered that the CTG should come to concrete conclusions on this particular issue.

10. The representative of Peru noted the provisions of the ATC relating to small suppliers, in Article 2.18 as well as in Article 6.6(b), where the objective was to increase the market access possibilities for these suppliers and to extend special and differential treatment in the application of the transitional safeguard mechanism. She referred to paragraph 289 of the TMB's report and said that the method used by the EC in order to calculate the growth factors had been recognized as the most beneficial for the small suppliers, because it gave greater increases for their exports than was the case under the method applied by the US and Canada. Therefore, the method used by the EC had fulfilled the obligations of this Article. In the view of Peru, this was the only way to follow a fair methodology that would lead to a logical implementation of the Agreement. She considered that it was very important for the CTG to take into account the interests of small suppliers in a disciplined implementation of the Agreement. Finally, she recalled the comments which had been made by other Members in this regard and said that it was for the Council to take the appropriate decisions, in conformity with its obligations, to oversee the implementation of this Agreement.

11. The spokesman for the European Communities recalled that the EC had no quantitative restrictions with least-developed country Members and their imports normally entered the EC market at zero duty. In response to the comments by Bangladesh, he mentioned that in 1995 Bangladesh was the twelfth largest supplier to the EC market and was currently the seventh largest supplier for textiles and the fifth largest supplier for clothing. He added that the EC's anti-dumping regime took appropriate account of the situation of Bangladesh as regards small suppliers. In the EC, two Members had initially been considered to fall into this category in the context of Article 2.18; one had entered into an agreement with the EC and as a result of that agreement, quotas under the ATC had been suspended.

12. The representative of the United States referred to the provisions of the ATC related to least-developed country Members, new entrants, small suppliers, and cotton-producing, exporting Members. The US had taken its obligations under the ATC seriously with respect to these groups of Members and had implemented the relevant provisions in two ways. In the period immediately prior to the start of the ATC, the US had held consultations with these Members, with a view to discussing how the ATC would be implemented. Pursuant to these consultations, adjustments had been made to the flexibility provisions relating to the quotas. Subsequently, at the start of the ATC, there had been further consultations with Members in each of these groups on issues that had arisen in respect of the implementation of the Agreement. The US had shown flexibility in these consultations. With respect to the differences in the implementation of the growth-on-growth provisions for small suppliers, this situation had begun at the time of the entry into force of the ATC, when the EC had used a different methodology from what the US had assumed was going to be used when the ATC was negotiated. It seemed clear to the US that the concept of advancement of one stage meant that instead of applying the increases in the growth rates specified for Stage 1, the concerned Members would apply the increases in the growth rates that were provided for Stage 2. There was nothing in the ATC that required the cumulation of the two growth rate increases; rather, it was a matter of substitution. He said that, unlike many other provisions of the ATC that had been cited by at least some of the exporting Members as problematic in their implementation, this was one subject that was quite specific and would have lent itself to a dispute settlement proceeding.

13. In the US' view, the provisions of Article 2.18 were clearly meant to say one thing, but had, in fact, been implemented in a different way by one importing Member; the US had not been approached for consultations on this issue. Responding to the question of Hong Kong, China (paragraph 8), he observed that the Agreement was silent on what was required with respect to Stage 3. In the absence of guidance from the Agreement, the US intended to repeat the growth rate from Stage 2, that is, a further 27% increase would be applied. In response to the point raised by Bangladesh, he noted that Bangladesh's exports had moved up in the rankings in the US market. In fact, as a result of the way that the Agreement had been structured, the growth rates for Bangladesh were higher and were growing substantially faster than in virtually any other Member with which the US had restraints. He added that, when the representative of Bangladesh cited the fact that its textile

and clothing exports had increased over this period and now comprised 75% of Bangladesh's total exports, that was an indication of the fact that, at least in this particular area, Bangladesh was doing very well. The fact that Bangladesh's textile and clothing exports were growing, as a percentage of total trade, simply indicated this particular Agreement was operating, with respect to Bangladesh, as was envisaged. As regards the question of tariff rates, which had arisen in several statements, he observed that this was not a subject that the ATC dealt with.

14. The representative of Canada recalled the comments which had been made with regard to the difference in the increases in the quota levels which had occurred as a result of the application of the ATC growth-on-growth provisions. He confirmed that the 19% increase in the quota levels as a result of the ATC's growth factor that he had calculated at the previous meeting was correct. This illustrated the fact that the normal growth-on-growth provisions did have, over time, a significant impact on the levels of the quotas. That was one factor to explain why imports into Canada from developing Members had increased by 79% over the period of the ATC. He agreed with the US' view that if Article 2.18 had been intended to have been applied on a cumulative basis, it would have specifically required this in its provisions. On this matter, it was also necessary to consider what had actually happened as regards the trade levels of small suppliers. In the case of Canada, when it implemented the provisions for small suppliers, it had extended this provision to 16 exporting Members. The strict reading of the Agreement required Canada only to apply this Article to ten Members, based on 1991 data. However, it was decided to calculate which Members would qualify as small suppliers not only on the basis of the year set out in the ATC, but also to include those which would have qualified in 1994. As a result, six additional Members had received treatment as small suppliers and their growth rates had been enhanced. Furthermore, the small suppliers had benefited from the fact that Canada had eliminated quotas on tailored-collar shirts in June 1997 and that when Canada had carried out partial quota elimination on 1 January 1998, on a range of women's, girls' and children's clothing, it had not reduced the quota levels. In this partial elimination of quotas, an action taken by Canada on 1 January 1998 under Article 2.15, small suppliers had benefited to the degree that the quotas had implicitly increased.

15. The representative of Canada further noted that a number of small exporters had also benefited from the fact that Canada had made a unilateral 10% increase in the quota levels of the winter outerwear category on 1 January 1998. Small suppliers would further benefit on 1 January 2002 when Canada would carry out further quota elimination, both in terms of full quota elimination and partial quota elimination. Here again, when making a partial quota elimination, Canada would not reduce the quota levels or adjust them as it was otherwise allowed to under the ATC. To respond to the question from Hong Kong, China (paragraph 8) as to what Canada would do on 1 January 2002 with regard to the increases in the growth rates for small suppliers, Canada had indicated in its notification to the TMB, that it would increase the growth rates by a further factor of 27%. With regard to the least-developed country Members, with the exception of Bangladesh, all of these Members were qualified as small suppliers in the case of Canada. Bangladesh did not qualify because it had become an important supplier to Canada. When Bangladesh had negotiated its original quotas with Canada, quite high quota levels had been offered. Canada had also given, under the original bilateral arrangement, fairly high growth rates, 7% or better annually, with generous provisions on swing and flexibility. Indeed, as a result of the application of the normal growth-on-growth provisions of the ATC, Bangladesh's growth rates would increase to over 12% as of 1 January 2002. In addition, Canada had liberalized one of Bangladesh's most valuable exports, tailored-collar shirts, and it had also benefited from the elimination of various women, children and girls' clothing in 1998 and again in 2002. Since 1994, imports from Bangladesh had increased 134%; since 1998, they were up 25%. Indeed, imports from Bangladesh currently accounted for 3.2% of Canada's clothing market. In the late 1980s, Bangladesh had not been exporting significant quantities to Canada, so it had gone from being a minor supplier to the fifth largest clothing supplier in just over ten years. As regards the cotton-producing exporting Members, when Canada implemented the ATC, it had consulted with a number of such Members and arrived at various arrangements. Since then, Canada had not held any further consultations with exporting Members, nor had any Member

approached Canada. He added that Canada did not apply quotas on a fibre basis. When the quotas on shirts were removed, this included products of cotton, poly-cotton and nylon; that is, on a non-discriminatory fibre basis.

16. The representative of Bangladesh appreciated that the EC had provided duty and quota-free access for imports of textile and clothing products from his country. The example of the EC should be adopted by other restraining Members. He understood that the initial quota growth rates had been negotiated at higher levels for Bangladesh: however, this was not the matter under discussion. Rather, since there were provisions in favour of LDCs in the ATC, the Council should consider how these provisions had been implemented. Were the restraining Members giving full meaning to these provisions? If not, these provisions would be invalid and would have no meaning. He understood that this might not be the right place for discussing anti-dumping duties, but this issue, for Bangladesh mainly concerned textile products, so it decided to raise the issue in this meeting to express concern and to request the CTG to take note of that concern.

17. The representative of the European Communities referred to the situation regarding the cotton-producing exporting Members. The EC had had consultations with these Members at earlier stages of the Agreement and had invited further discussion prior to the implementation of the third stage of integration. One major cotton producer had recently taken up the invitation of the EC to hold consultations. Concerning the small suppliers growth-on-growth provisions, he noted that the ITCB members had drawn negative inferences as a result of some WTO Members not applying the methodology used by the EC. The ITCB members had not concluded that the methodology used by the EC was the correct one, but as far as the EC was concerned, it was in full compliance with Article 2.18.

18. The representative of India stated that it had an interest in Article 1.4 and endorsed the statement made by Uruguay and a number of ITCB members. He questioned if the consultations mentioned in that Article had taken place before the implementation of the ATC, could that be considered to be valid for the entire period. Times changed and the trade patterns changed; therefore, this was an on-going obligation. India also wished to comment on the broader subject-matter of special and differential treatment. This was actually a matter which the Appellate Body had recently commented upon in relation to the efficient interpretation of any agreement. Basically, it had said that there could not be redundant expressions in an agreement; where there was a sentence using the term "shall" or "should", it could be said that the levels of obligations in an agreement were different. He went on to say that, if there was a requirement which provided for 16%, 17% or 18% of products to be integrated at the respective stages, that was one matter, but the ATC was not, at the end of the day, about maths; it was about trade and exports. So in India's view, when the Agreement provided for integration of 16%, 17% or 18%, this was, of course, an obligation. That did not, however, mean there were not other things in the Agreement which did not involve such basic obligations and rights for Members and he found it disturbing that Members were overlooking these. Whenever developing Members said that integration was not commercially meaningful, the restraining Members said that the deal was the 16%, 17% or 18% integration. Although he was willing to acknowledge that some other provisions in the Agreement might be less binding, these provisions were, nevertheless, obligations and it could not be said that they did not matter. Similarly, the ITCB members' submission said that Members had to give full meaning and effect to all the expressions in the ATC. Certainly, there were some things that were central, such as integration and growth rates and they had been expressed in mathematical terms and that was the basic minimum that was needed to be done because that was a commitment which Members had undertaken. But it did not mean that other provisions could basically be reduced to redundancy.

19. The representative of Paraguay appreciated the report of the TMB and questioned if it was the lack of information from Members which had made it difficult to arrive at conclusions on the implementation of Article 1.4. He referred to paragraphs 584 and 585 of the TMB's report. He noted that several Members had requested information on the implementation of Article 1.4 and that there

had been consultations during the period prior to the implementation of the Agreement and that consultations remained open for those countries which were cotton-producing Members. His delegation had had consultations with some delegations, but in some cases, not only had consultations not been held, but indications were negative. He said that for some exports to the US, there were requirements concerning the origin of the raw material so that exporters might benefit from more favourable treatment; however, these provisions were not in favour of the cotton-producing exporting Members. On the contrary these requirements went against them and Paraguay, as an exporter of cotton, had been adversely affected in its relations with other countries in the region. About 70% of Paraguay's cotton was exported to the countries falling under the scope of these agreements with the US. He concluded that it would be useful to have the Council look into the matter.

(iv) Article 1.5 – Autonomous Industrial Adjustment

20. The Chairman then turned to the next subject, Article 1.5. This Article stated that in order to facilitate the integration of the textile and clothing sector into the GATT, Members would allow for continuous autonomous industrial adjustment and increased competition in their markets.

21. The representative of Uruguay referred to document G/C/W/304, paragraphs 111 to 121, and noted that there seemed to be little information available to actually evaluate the extent to which the implementation of the ATC, in particular by the restraining Members, might or might not have produced industrial adjustment in their markets. He considered that the TMB had reached a similar conclusion in paragraph 617 of its report, "All in all..., 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...". The information provided by Canada, the EC, Japan, Turkey and the US, in paragraphs 607 to 611 of the TMB's report, was not what had been required, because it was not sufficient to assess the contribution that ATC implementation might or might not have made to facilitating the integration process.

22. In his view, the information provided did not, in itself, justify a conclusion that autonomous industrial adjustment had been allowed or promoted in the sense of Article 1.5. The information, reported to the TMB and contained in its report, was largely confined to figures on purported increases in imports or losses in employment. But few, if any, indications were given as to the sources of import increases, or the contribution of factors such as technological change in the losses in employment. Moreover, no data had been made available on trends or changes in domestic production; changes in the shares of the market held by domestic producers; and the factors responsible for such changes, including, as the TMB also points out in paragraph 615 of its report, the effect of offshore assembly operations induced by non-ATC policy instruments. He suggested that more meaningful and comprehensive information, to assist in assessing the extent to which implementation of the ATC might have contributed to producing autonomous industrial adjustment and increased competition in their markets, should be provided, particularly by the restraining Members.

23. The representative of Uruguay sought some clarification with respect to the data provided to the TMB, as reflected in paragraphs 607 to 611 of the TMB's report. First, the data in respect of imports did not seem to tally with that provided in the WTO document G/L/474, Background Statistical Information, with respect to trade in textiles and clothing. Second, the reliability of the figures in respect of changes in employment was questionable because, according to a survey conducted by the ILO, the shifting of small assembly operations to part-time household employment generally escaped being captured in employment numbers. Third, the ITCB had analyzed the import data of the restraining Members on the basis of the product coverage of the ATC and in a common currency unit, i.e., the US dollar, which was the norm in the WTO for such statistical information. This was necessary to have adequate comparability and analysis. In the case of Canada, the share of developing countries in total ATC imports had declined from 48.62% in 1990 to 45.71% in 1999,

whereas the share of the US had increased from 33.59% to 45.34% during the same period. It was also interesting to note that the US had managed to double its share of Canadian clothing imports from 8.24% in 1990 to 16.83% in 1999. It also had increased its share of Canada's textile imports from 51.19% in 1990 to 61.66% in 1999. These shifts in relative shares of imports could not be attributed to the implementation of the ATC.

24. He noted, in the case of the EC market, that the yearly rates of increase in total ATC imports between 1990 and 1994, i.e., in the immediate pre-ATC period, amounted to 6.08% (on the basis of data for EU-12 members). On the other hand, the comparable rate during 1995 to 2000 (i.e., the ATC period) had been only 1.64%. This took into account the fact that the EC membership had increased to 15 members from 1995. Imports from 17 restrained suppliers had increased at the annual rate of 6.42% in the pre-ATC period, but only by 2.43% during the ATC period. The share of ten countries to whom the EU had extended preferential treatment had increased from 20.64% in 1990 to 31.65% in 2000, an increase of 11%. These countries were mainly from Eastern Europe, and also included Malta, Morocco, Tunisia and Turkey. The share of imports from countries subject to quota restrictions had increased from 42.52% in 1990 to only 44.62% in 2000, an increase of just 2%. He concluded, therefore, that it did not appear to be the implementation of the ATC to which these increases could be attributed.

25. Turning to the ITCB members' analysis of the US data, he noted that total imports had increased at an annual rate of 9.38% during 1990–1994. Over the ATC period (1995–2000), they increased to 10.24% annually, i.e., less than 1% faster. For textiles, the rate of increase had been 9.06% in the ATC period, compared to 9.4% in the pre-ATC period. These rates of import increases in the US also needed to be viewed in the context of a strong dollar and a robust expansion in demand during a period of sustained economic growth. He further noted that the share of restrained suppliers in the US market had declined from 82.19% in 1990 to 80.15% in 2000. Also, Canada's share had increased from 1.73% in 1990 to 4.67% in 2000 in overall textiles and clothing imports; from 5.21% to 11.09% in textiles; and from 0.78% to 3.05% in clothing.

26. He emphasized that very few quota restrictions had been eliminated during the first two stages of the ATC implementation as shown in the tables which ITCB members had circulated earlier. Therefore, the small changes in imports could not be attributed to the integration process under the ATC but were due mainly to marginal augmentations in quota growth rates.

27. In conclusion, he stressed that the question to be addressed in the context of Article 1.5 was, first and foremost, whether the restraining Members "allow for continuous autonomous industrial adjustment" in their markets in order to facilitate the integration of the sector into GATT 1994. However, few meaningful efforts could be shown in that direction. It would seem that the postponement and deferral of the integration of so-called sensitive products until the end of the transitional period and the policy to use quotas as a bargaining chip to secure additional access in developing Member markets, would seem to suggest that the integration process might in fact have been hindered. He urged the Council to address the issue and decide that immediate positive steps needed to be taken to facilitate the integration process.

28. The representative of India commented that the key points in relation to the implementation of Article 1.5 had been made in the submission of the ITCB members and the facts and figures had been reproduced. He recalled the language of Article 1.5, "in order to facilitate the integration of the textiles and clothing sector into GATT 1994", and noted that Article 9 also stated that "the textile and clothing sector shall be fully integrated into GATT 1994". Therefore, this integration of the textiles and clothing sector into GATT 1994, which also figured in Article 9, essentially concerned the restrictions thereunder standing terminated. This made it clear beyond a shadow of doubt, which Members were to allow continuous autonomous industrial adjustment, as the reference was to restraining Members, because others did not maintain quantitative restrictions under the ATC.

Article 1.5 applied to those Members which maintained quantitative restrictions and they had an obligation to ensure that this sector was integrated into GATT 1994.

29. He then addressed what, in his view, was meant by continuous autonomous industrial adjustment. It had to do with a number of points already mentioned, including allowing for increased competition and demonstrating it through the changes that might happen in the market. But, more importantly, and since integration under the Agreement was basically back-loaded, autonomous industrial adjustment had to do with actions that Members might not be obliged to take, but which were required, and there was a difference between being obliged to do something and required to do. One important area where he considered autonomous industrial adjustment could be achieved was through the application of Articles 2.10 and 2.15. There was nothing in the Agreement which prevented Members from early integration and advancing quota elimination which would then provide for autonomous industrial adjustment. He urged restraining Members to reflect upon this. These Articles could not be viewed in isolation as ultimately there was an objective in their application. Autonomous industrial adjustment was not an end in itself, it had to lead to something and the final objective was basically to make sure that the restrictions under this Agreement stood terminated, so that the sector could be integrated into GATT 1994. It created an obligation on those Members which were primarily responsible for the lack of effective integration of the sector. There was no point in trying to argue that developing country Members were equally obligated under this Article, as they did not maintain quantitative restrictions. They were not the ones which were implementing the integration of the sector into GATT 1994; the burden was exclusively on those Members maintaining restraints and they needed to demonstrate that there was autonomous industrial adjustment which could be done by relying on the provisions of the ATC which allowed for increased imports and provided for competition.

30. The representative of Hong Kong, China said that continuous autonomous industrial adjustment and increased competition, as mandated in Article 1.5, was one area where there was serious doubt that the ATC was delivering what had been expected. Article 1.5 of the ATC called for continuous autonomous industrial adjustment and increased competition in markets for a very specific purpose; namely, to facilitate the integration of the textiles and clothing sector into GATT 1994. For the vast majority of Members, no such facilitation was necessary, all that was required from them in order to integrate their textiles and clothing sectors was to forego their rights to the transitional safeguard mechanism under Article 6. It followed, therefore, that Article 1.5 was addressed to the three remaining Members which had carried over MFA restrictions. In the case of those three Members, integration certainly did need to be facilitated if a smooth transition was to be achieved by 2005.

31. He noted that the ATC did not mandate precisely how continuous autonomous industrial adjustment and increased competition was to be achieved. It was left to the Members concerned to decide how to implement this provision; however, that did not mean that these Members were free not to implement this provision at all. Some attention, though arguably not enough, had been paid to continuous autonomous industrial adjustment and increased competition in markets in the first major review by the CTG, the conclusions of which had noted that further information in this regard would have facilitated the review of progress. To judge by the responses from the restraining Members to the TMB's request for comments on this aspect, the conclusion of the first major review that further information was required, had not been heeded. He considered that, from the limited information provided, the TMB could not arrive at any judgements at all. In one case the information suggested that there had been no progress, while in the other cases the information available was insufficient. The restraining Members' responses had generally pointed to the fact that some adjustment was taking place in their markets with multilateral trade playing a large role. He commented that there would, indeed, be something very wrong if this was not the case as in any progressive economy, adjustment in markets was the norm. And under the normal GATT 1994 regimes, the growth of multilateral trade had led economic growth, so it should be a matter of course that multilateral trade played a large role in markets.

32. He said that one restraining Member had compared the rate of growth of textiles and clothing imports to the rate of growth of non-oil imports into its market. This was quite a useful comparison; however, what it showed was decidedly unsatisfactory. The two rates of growth were virtually identical, that is, 9.95% versus 9.79% per annum. That would have been acceptable if this Member's textile and clothing market had been starting from a position of equilibrium. But if that had been the case, there would have been no need for the ATC. The situation for the restraining Members was that, before the advent of the ATC, their textile and clothing markets had been protected under an exceptional regime of highly discriminatory measures. Import growth rates for textiles and clothing needed to be significantly higher than the norm, if they were to make any contribution to the adjustment required to move to a market that would be protected only under the normal GATT 1994 rules when the ATC terminated on 1 January 2005. He recalled the discussion at the previous meeting when two restraining Members had provided some details about the adjustments taking place in their markets, which they claimed fully satisfied Article 1.5. However, as Uruguay had pointed out, data in the public domain suggested that all was far from satisfactory with the adjustment process in the three restraining Members' markets. In the case of Canada, the share of developing countries in its total ATC imports had declined since 1990. In the case of the EC, the growth rate of ATC imports from the 17 restrained suppliers had declined markedly since 1995. In the case of the US, although the growth rate of ATC imports had not declined under the ATC, the share held by restrained suppliers had. These indicators, though not necessarily conclusive, at least demonstrated that more assessment was needed if the CTG was to have a clear idea whether this provision was being properly implemented. He recalled that the first major review had concluded that more information was required on this subject; however, the TMB had been unable to provide anywhere near sufficient information about the progress of continuous autonomous adjustment and increased competition in markets to arrive at a proper assessment of this provision. It would be a contribution to the review process if restraining Members were to provide meaningful information to the TMB on a regular basis in the remaining three years of the ATC.

33. The representative of Brazil observed that although Article 1.5 of the ATC was a very short one, it was of extremely high importance. This importance was to be found in the signals that the actions which were required to be taken would send out, first, concerning the pace of the integration itself and second, on the future functioning of the restraining Members' markets and their ability to operate in a totally free condition. He agreed with India that actions were to be taken by restraining Members. These Members had presented some variables in their submissions to try to demonstrate that there was autonomous industrial adjustment and increased competition in their markets. These variables were set out in the report of the TMB, for instance, decreased employment levels, closures of plants and so on. However, these variables could have some shortcomings if they were analyzed in the context of the broader picture. Uruguay had mentioned some of them. Factors such as the employment and closure of plants could not be attributed solely to structural adjustment. They could be the result of numerous other factors such as technological changes as had been reflected in the TMB's report. He believed that the most important element of Article 1.5 was the two words "allow for". He could see little indication from the submissions presented by restraining Members that they had been taking actions to allow for autonomous adjustment and increased competition. The increases in imports that had been shown could have several reasons, as indicated by Uruguay. He considered that the need for greater improvement in the implementation of the provisions of Article 1.5 should be recognized in the Council's conclusions.

34. The representative of Canada agreed with Brazil that the most important issue in the implementation of Article 1.5 was to allow for autonomous industrial adjustment. However, if the exporting Members were saying that they wanted the restraining Members to look at every single job that had changed in the textiles sector since 1994 and to attribute it to technological change or to imports, they could never fulfil the obligation as there were a lot of complicated factors in the market. It was impossible to determine the cause of every single job loss. Rather, it was necessary to look at the overall picture to see if adjustment was happening in an opening market. Canada was concerned that Uruguay had focussed on the import shares of developing countries in the import market of

Canada as opposed to the overall Canadian market and these had been calculated in US dollars. Developments in the Canadian market had to be considered in terms of Canadian dollars as currencies moved in different directions, and this could affect calculations. Focussing solely on the import share of the Canadian market overlooked a number of things. Since 1994, US exports to Canada were up 47%, however, India was up 106%, Bangladesh was up 134%, Thailand was up 90%, Indonesia was up 69%, El Salvador was up 185%, and Dominican Republic was up 169%. Some Members were not up as much, however, in terms of the value of imports or absolute increases, but their exports were still higher and this had nothing to do with market share. One could talk about market share, but Canada considered that exporting Members would be more interested in knowing if their exports had increased. A situation where exports increase while market shares goes down is more favourable than the contrary. The Canadian domestic market had grown by about 11% since 1994 while imports overall had grown by around 70%. Imports from developing Members had grown by around 79% in Canadian dollars. As a result, in 2000, 47% of the Canadian market was now captured by imports from developing Members. Within this picture, it might be that the share of certain developing Members had gone down, *vis-à-vis* the share of the United States, but overall developing Members currently accounted for 47% of the Canadian market.

35. He commented that continuous autonomous industrial adjustment had not started on 1 January 1995; rather, one had to look at the longer picture, because there had been adjustment in the Canadian market. In some cases employment had actually gone up since 1994 in certain sub-sectors of the textiles industry. Going back to 1980s, the Canadian industry had 350,000 workers; this sector dominated the domestic market. Now there were just under 150,000 workers, and in the case of both textiles and clothing, domestic producers held less than half of the domestic market. In the case of clothing, domestic producers had less than 45% of the domestic market. So, clearly, something had been happening to allow for increased access. One of the factors was integration, there had been some quota elimination. There was also growth-on-growth, because the growth rates for the remaining quotas were now a lot higher than the annual growth rate of the market, at 1.5%. So there were pressures on the Canadian market. At the same time there were technological changes and changes in taste, but clearly the market was opening as revealed by the facts.

36. He said that the Canadian clothing industry had continued to lose share in its domestic market since about 1988. Plants had been closing and competition had been one of the factors. Currently, there were fewer plants, while the remaining plants were more specialized and they were also starting to export. The export numbers looked very good in terms of growth rates, but that was because they had started from a small base. The industry had started to adjust because it realized, to stay in business it had to upgrade its products, move to the higher end of the market and get into the export business. The industry had also shifted into the product design end and away from basic production. A number of Canadian companies had linkages with companies in the exporting Members where Canadian companies did the design functions and had most of the product assembled in another country. The same had been happening in the textiles industry.

37. He concluded that the domestic industry had been losing market share, falling from 59% in 1994 to about 45% in 1999. The textiles industry had also responded by reducing costs, closing plants, opening new plants, increasing investment in capital intensive production methods and shifting to export markets in specialized product areas, mainly in industrial and home furnishing textiles. Canada did not produce much in the way of fabrics for clothing. The situation in Canada was basically that in domestic textile production, approximately one in four establishments had disappeared since 1989. It was a much higher rate in the case of the primary textiles sector. Particularly hard hit were the mat, rug and carpet industry and the clothing fabric industry. Things were happening in the Canadian domestic industry as revealed by the fact that it had lost market share to imports and the industry was shifting to exporting and this was related at least partially to the ATC.

38. The representative of the United States commented on the statement made by Uruguay, considering that it did not relate directly to Article 1.5. Statements had been made with respect to the

share of the US market that was held by restrained Members at the present time as compared to previous periods, as well as the US' outward processing trade. In fact, in the process of making the transition to an environment where quotas would no longer be applied, the US had used various strategies. One strategy had to do with US' trade with Members with which it had free trade arrangements. There was no question that its trade with NAFTA countries had gone up over this period. In the same vein, there was now a much larger element of outward processing trade carried out by the US textiles and clothing industry than had existed in the past. But there was nothing in the ATC that prevented this. This, in fact, was a perfectly rational commercial strategy to achieve the ultimate goal of the reintegration of the textiles and clothing sector into GATT 1994 rules. He said that there were no implications to be drawn from the US' statistics that had been cited by other Members.

39. The representative of the US observed that the data that had been circulated by the WTO Secretariat did not seem to tally fully with the information that had been supplied by the restraining Members. In the case of the information supplied by the United States, only official US imports statistics had been used. Another aspect was the question if there had been an increase in domestic output in the US and could this be a trade-distorting factor. He also referred to an issue that had been raised by some Members as to whether Article 1.5 applied only to restraining Members or whether this was an obligation that had been assumed by all WTO Members. It was the US' position that, when this Agreement was being negotiated, the provisions of Article 1.5 were intended to apply to all WTO Members. It was his understanding that, at the time, there was a recognition that this had been a sector that was quite peculiar in the sense that, in addition to the quota restraints being applied by some of the importing Members, there had been a severely distorted trade pattern in a number of the exporting Members as well. As a consequence, the US believed that it had been recognized, in relation to the benefits of trade, that the increased competition had been something that would be applicable to all Members if the restraints in place, both quota and non-quota measures, were to be lifted.

40. The US considered that the classical economic argument of how an economy benefited through increased trade applied in this sector more than all others. So, if an exporting Member had remained closed to imports, it simply would not be in a position to reap the benefits of trade. In the US view, although Article 1.5 applied in different ways, the restraining Members had different paths that they needed to follow, but the exporting Members also had an obligation. With respect to the paths followed by the restraining Members, this information had been notified to the TMB and these submissions should be part of the record in this review. He stressed that there was simply no question that the US had engaged in the process of adjustment and increased competition for which guidance was given in Article 1.5, namely, that there should be a smooth reintegration of this sector into normal GATT 1994 rules and that it was the restraining Members' obligation through, among other things, the provisions of Article 1.5, to ensure that this smooth reintegration happened. The statistics that the US had provided indicated that this process was on track. He did not think that there was a credible argument that, three years from now, when the ATC would finally expire, the US was going to have a huge adjustment burden that would have to be borne. The decreases in employment in this sector and the large increases in imports showed, in fact, that these provisions had been respected by the US and that it would be in a position to meet its obligations at the end of the ATC.

41. The spokesman for the European Communities said that Article 1.5 was a provision that was drafted in terms which clearly referred to Members and not just to the restraining Members. It referred to an integration process, which in other articles had to do not only with removing restraints, but also with integration in terms of Article 7. The ITCB members were of the view, through their interpretation and construction of the Agreement, that it did not apply to Members which did not have restraints; it only applied to restraining Members. The EC did not agree with this reasoning and interpretation given by the ITCB members. Article 1.5 was a provision on which the TMB had invited comments from all Members, so the TMB clearly thought that it applied to Members, as opposed to just the restraining Members. Five Members had replied, including one Member that did

not apply restraints. The TMB had commented in paragraph 617 of its report, "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 of the extent to which autonomous industrial adjustment and increased competition in Members' markets, in the sense of Article 1.5, has been achieved ...". Also paragraph 616 began, "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". Since the US, Canada and the EC had replied to the TMB's request, the reference to the need for some other Members which could have reported was surely a reference to Members that did not apply restraints. In part, the TMB's inability to make a full analysis in respect of the implementation of Article 1.5, was not a comment on the information which had been supplied by the restraining Members but, equally, a comment on the lack of information supplied by Members as a whole. So, there was certainly more than one way of reading the comments in the TMB's report.

42. As to the EC's application of Article 1.5, he recalled that imports at a level of Euros 70 billion was up 17% from 1999 to 2000, an increase of Euros 10 billion of which Euros 9.3 billion had come from developing Members. Over the period 1995 to 2000, the increase in imports was 54%, an increase of Euros 24.3 billion, of which Euros 23.9 billion had come from developing countries. Any comparison of EC trade before it was enlarged, in relation to statistics taken after enlargement, would lead to small differences. The EC's position was that adjustment was taking place as indicated, among other developments, by the loss of one million jobs over the past ten years. This period went beyond the ATC, but it illustrated one aspect of autonomous adjustment, which certainly had taken place and was continuing to take place. He thought that it was wrong to criticise the TMB for not having made a full analysis of the submissions that were provided, as the TMB did not have information from all Members.

43. The representative of Switzerland said that, as was the case in the US, there had been a decline in its textile and clothing industry workforce between 1993 and 1998. Adjustment was taking place, not only in Members which had restraints, but also in other Members. He considered that the analysis by the TMB would have been more complete if it had included some Members which did not have quotas in order to measure how exports from European countries without quotas had fared. This might also have shown the impact of regional agreements on trade in yarns, fabrics, etc. in relation to trade in clothing. This would have given the opportunity to compare the impact on Members with quotas to those with no quotas, so that one could see that everything was not equal.

44. The representative of India considered that the arguments made by the developed Members would mean that all developing, exporting Members should be asked how many plants had closed, how many jobs had been lost, how much damage had happened to their industries, had competition increased? This would be totally unreasonable; such an argument could not be sustained. He considered it wrong to suggest that the words of Article 1.5 could be interpreted in such a narrow fashion. This was not the intent of the exercise. As regards the statistics given by the developed Members, he asked if they related to the ATC product coverage, as he understood that this was not the case. Concerning outward processing trade and regional trade agreements, the representative of India said that they had their role and legitimate place in the WTO, but they were not functions of the ATC. Members were interested in knowing about the autonomous industrial adjustment and the increases in imports that were happening under the ATC.

45. He went on to state that, if the bulk of the quotas were to remain in place until the end of 2004, the implementation of the Agreement itself would be back-loaded. Members were not providing competition because the Agreement did not oblige it. The restraining Members were strictly applying the 16%, 17% and 18% product integration at the respective stages. Given the fact that the implementation of the Agreement was back-loaded, and the restraining Members were not doing anything more than they had to and were not resorting to Articles 2.10 and 2.15, it would be impossible to speak of increased competition, because it was not happening. To conclude, he said that

the statistics for EC-15 external trade showed an annual change between 1990 and 1994 of 3.32% in terms of import value, and in million of dollars it came down to 1.6%. Therefore, whatever the statistics used, he did not consider that the restraining Members should be surprised that there had been no adjustment and no increase in competition because the bulk of the quotas remained in place. If Members did not eliminate the quotas, there could be no increase in competition. The question was whether autonomous industrial adjustment had been taken, and his answer was in the negative.

46. The representative of Canada said that the debate reflected a fundamental difference of views on the functioning of the ATC. In terms of the number of quotas eliminated, the facts were known. He added that Canada also had some instances of partial quota elimination which had increased the market access. He said that, due to the application of the growth-on-growth provisions, quotas were rising faster than the overall growth of the domestic market. This had increased opportunities for exporting Members, thus increasing competition. He noticed that the ITCB members had focused on percentages while his data were based on values. The fact was that Canada's imports were increasing in value terms, which meant that exporters were shipping more to Canada and this applied to all developing country Members. Therefore, adjustment had to be happening to allow the increased shipments into the market. As to the question of the sources of data, Canada's data was drawn from all of HS Chapters 50 to 63, subtracting a few products that were not covered by the ATC. There might be a discrepancy because of the miscalculation Canada had made on the "ex-lines" of Chapter 39. It involved some products that Canada admitted it had wrongly termed as being textiles and clothing. That might explain the slightly different data because trade under Chapter 39 *vis-à-vis* Canada and the United States was large. However, there was very little discrepancy in terms of the "ex-lines" for clothing products outside of HS Chapters 60, 61 and 62. Returning to the topic of autonomous industrial adjustment, he considered that Members had to consider that everyday the Canadian market was adjusting to increasing imports. Imports from developing Members were up, and they were taking a larger share of the Canadian market.

47. The representative of Pakistan said that previous speakers had already elucidated in detail why the TMB could not pronounce itself on the issue of autonomous industrial adjustment and why it continued to face difficulty in making a clear assessment of the implementation of Article 1.5. Figures had been provided by Members on the increases in imports, also on job losses, but at the same time, no data had been provided on the trends and changes in domestic production and on changes in the shares of the markets held by domestic producers. That was probably the reason why the TMB could not report clearly on this issue, the way that at least some of the Members would have wanted it to be. That stressed the imperative need for Members to provide more meaningful information to the TMB to enable it to come to conclusions. As to what had been said about Article 1.5 being applicable to all Members, looking at the context in which Article 1.5 had been negotiated and drafted, it was clear that the intention had been to integrate the textiles and clothing sector into GATT 1994 rules by removing restraints on these products. The context was the integration and the removal of the quantitative restrictions. He asked which were the Members that had been maintaining quantitative restrictions when the ATC was drafted. This was the context in which autonomous industrial adjustment had been foreseen. Obviously, those Members which had not maintained restrictions were not required to undertake autonomous industrial adjustment.

48. The intention of the ATC was to allow for autonomous industrial adjustment which would have been expected to result in increased market competition. Looking at the available data, in the pre-ATC period in one market, the yearly rate of import increase had been 6.08% and during the ATC so far, the yearly increase in imports was 1.64%. So, he did not consider that this implied that there had been increased market competition. The situation was not much different in other restraining Members. Arguments had been made that there had been increased imports and he asked if these could be attributed to the ATC. There had been increases in yearly rates ever since the inception of the ATC which, in Pakistan's view, could not be attributed to the ATC. That was why Pakistan believed that the integration process, in itself, had not contributed much to the increased competition and increase in imports, because large number of quotas still remained in place. There had been a

lower rate of yearly increase in imports from the developing countries and there had been marginal increases in the quota growth rates.

49. The spokesman for the European Communities referred to the book, "The Drafting History of the Agreement on Textiles and Clothing", by Raffaelli and Jenkins, published by the ITCB. In particular, he referred to the concluding sentence on the comment relating to Article 1.5 on page 89, "The need to encourage adjustment should also be taken very seriously also by restrained countries which are less competitive; otherwise they might see their export's sector disappear when trade in this sector is liberalized". While the book said that the text of Article 1.5 reflected little more than a pious vow because of the use of the word "should" in regard to allowing for continuous autonomous industrial adjustment, it also said that serious attention was to be given to this provision, since products representing 49% of imports in 1990 would be integrated on the last day of the ATC. Autonomous industrial adjustment should, therefore, be strongly encouraged. So, both views were reflected; the view that it was important, why certain Members thought it was important, and the fact that it did apply to all Members.

(v) Article 1.6 – Rights and Obligations of Members under WTO and MT Agreements

50. The Chairman proposed that the Council address the next item, Article 1.6, which stated "Unless otherwise provided in the Agreement, its provision shall not affect the rights and obligations of Members under the provisions of the WTO Agreement and the MT Agreements."

51. The representative of Uruguay said that the implementation of Article 1.6 was an issue of great significance in assessing whether the balance of rights and obligations embodied in the ATC was being impaired. There had been several instances during the second stage of the ATC implementation process in which the EC had eliminated quota restrictions on certain non-WTO Member countries with respect to textile and clothing products, while continuing to apply such restrictions on WTO Members. It was apparent from paragraph 643 of the TMB's report that the EC did not contest this fact, nor did it offer any defense under the Agreement. As stated in the ITCB members' submission to the CTG, this was not in accordance with the EC's obligations under the ATC by virtue of Article 1.6. Therefore, impairment of the rights of WTO Members whose exports to the EC had been restrained by quotas existed. The TMB had recognized that the issue raised was valid. Unfortunately, however, the TMB had observed, in paragraph 646 of its report, that none of the provisions of the ATC, including Article 1.6, had authorized the TMB to consider and pronounce on whether rights and obligations of Members had been affected or not. The EC had claimed that the matter did not fall under the purview of the TMB. ITCB members, however, did not agree with this view.

52. Turning to the TMB's observation in its report, paragraph 646, where it had been observed that the ATC did not authorize the TMB to consider and to pronounce on the matter, he examined the TMB's reasoning in this respect: "In support of this observation, [i.e., that the ATC did not authorize the Body to pronounce itself on this matter,] the TMB referred, as an example, to the restrictions notified under Article 3.1. 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". He considered this to be a far-fetched observation. The issue was not that of a "restriction", nor was it that of a "justification" for a restriction. The issue pertained to the elimination of certain restrictions by the EC. Therefore, a reference to Article 3.4 of the ATC was not relevant. The ITCB members requested the CTG to consider this matter, pursuant to its mandate, to ensure that the balance of rights and obligations embodied in the ATC was not being impaired.

53. The representative of Uruguay also recalled that Article 1.6 of the ATC provided that "Unless otherwise provided in this Agreement, its provisions shall not affect the rights and obligations of Members under the provisions of the WTO Agreement and the Multilateral Trade Agreements".

Therefore, the rules of GATT 1994 applied, unless the ATC contained a different rule, which in this instance was not the case. Hence, the elimination of quotas on non-WTO Members, while maintaining them on WTO Members, was inconsistent with the EC's obligation under GATT 1994, especially Articles I and XIII, inasmuch as these were not excepted from the ATC by virtue of Article 1.6. The basic principle of MFN related to imports from all countries, whether they were WTO Members or non-WTO Members. Any favour accorded by a WTO Member to any country, whether or not it was a WTO Member, must also be accorded immediately and unconditionally to all WTO Members. The concession accorded to non-WTO Members by the EC was the elimination of quota restrictions on imports of textile and clothing products. In accordance with Article I of the GATT 1994, as explained above, this concession should also have been immediately and unconditionally accorded to imports from all WTO Members. If this was not done and non-WTO Members were treated more favourably than WTO Members, the balance of rights and obligations under the WTO was obviously negatively affected. Such more favourable treatment was inconsistent with the MFN principle, which could not be departed from unless provided for in the ATC. Likewise, pursuant to Article XIII:1 of GATT 1994, no restriction shall be applied on imports from any Member unless imports of like products from all third countries were similarly restricted. The ATC was an integral part of the WTO Agreements. By virtue of Article 1.6 of the ATC, the obligations of restraining Members could not be exempted from the provisions of GATT 1994 unless specifically provided for in the ATC. As the ATC did not provide for any such specific exemption, the elimination of quotas with respect to non-WTO Members, while keeping them in place on WTO Members, was inconsistent with the EC's obligations under Articles I and XIII of GATT 1994, and, consequently, Article 1.6 of the ATC. In conclusion, he said that this action involved an obvious violation of obligations and, therefore, it had impaired the rights of WTO Members whose exports remained under quota restrictions.

54. The representative of Malaysia, speaking on behalf of the ASEAN Members of the WTO, shared the fundamental concerns that had been raised by Uruguay. ASEAN Members expected that any advantage or favour which was granted by a Member to any non-WTO Member should also be accorded immediately and unconditionally to all WTO Members; this was a fundamental issue. Malaysia believed in the principle of MFN to which all Members were part; they were also subject to Article 1.6 of the ATC. A Member simply could not derogate from this principle. Indeed, the Member concerned in this case had not contested the fact that it had lifted quotas on certain non-WTO Members as a favour or privilege granted by such Member to these countries. Malaysia shared the view of the ITCB members that this action had impaired the rights of Members. It was hoped that the CTG would take account of this matter in its assessment as to whether or not the balance of rights and obligations of Members had been impaired by this situation.

55. The representative of India said that this was an extremely serious issue for a number of Members. The ATC itself was a deviation from normal GATT 1994 rules inasmuch as it allowed Members to maintain some restrictions which would have otherwise been GATT-inconsistent. That was why the ATC provided for a transitional period. In terms of the hierarchy of the rules to be applied in cases of conflicting situations in the WTO, India's understanding was that if there had been a conflict between the WTO Agreement, the Marrakesh Agreement Establishing the WTO and GATT 1994, the Marrakesh Agreement would prevail. If there was a conflict between the GATT 1994 and one of the Multilateral Trade Agreements in the various annexes, it was the MT Agreement which would prevail. The problem here was that the EC had clearly said that these measures were not under the purview of the ATC. Clearly the EC had not been able to justify them under the ATC, so it said, by its own admission, that this was not a matter for the ATC. If it was not a matter for the ATC, the only test was whether the measures in question were consistent with anything else, which in this case would have been GATT 1994. He did, however, see a linkage. While it had been argued that these measures were not under the purview of the ATC or were not justified under the ATC, the fact of the matter was that they were related to textiles and clothing trade. So, in the CTG's role of supervising the implementation of the ATC and, more importantly, of ensuring that the balance of rights and obligations embodied in the ATC were not being impaired under Article 8.12,

India considered that this was an extremely important matter. There was no way for a Member to justify the elimination of restrictions on non-WTO Members while maintaining them on WTO Members. India was not arguing that the restrictions had to be reimposed on non-WTO Members. It was only saying that the Members involved should immediately make available the same advantage or benefit to other WTO Members. This important issue went to the heart of the ITCB members' argument, that the balance of rights and obligations under this Agreement for the exporting Members had been impaired.

56. The representative of Pakistan endorsed the comments made on this subject by other developing country Members. The EC had shown, by its own admission, that the measures were not under the ATC. According to international law, the provisions of subsequent multilateral agreements, on the same subject would prevail. Therefore, the provisions of GATT 1994 would have applied. Members knew that there were certain basic principles of GATT 1994 beginning with MFN, and then national treatment and then Article XIII, with non-discrimination in the application of quantitative restrictions. So, if GATT 1994 was to apply, these basic principles would have to apply. The point had been well made by Malaysia that any advantage, favour or privilege which had been granted to any country would automatically be available to WTO Members. So, the EC's measures negated the MFN principle. Secondly, Article XIII required Members not to discriminate in the application of quantitative restrictions; however, these measures taken by the EC were discriminatory as it had removed restrictions on a non-Member while continuing to enforce such restrictions on WTO Members. This was a serious issue and Pakistan requested the CTG to consider the matter pursuant to its mandate to ensure that the balance of rights and obligations was not impaired.

57. The representative of the United States said that there was an analogous situation in the current subject in relation to the provisions of the ATC concerning the elimination of restrictions on WTO Members. The ATC allowed for the discriminatory elimination of restrictions on WTO Members; therefore, one could not make an argument that such a procedure would not be possible in cases involving non-Members. The US' position was that, with respect to non-WTO Members, this Agreement, as well as other provisions of the WTO, simply did not apply. The US maintained restrictions on non-WTO Members; its agreements with them were adjusted from time to time. It did not believe that it had any responsibilities under this Agreement to provide similar treatment to WTO Members.

58. The spokesman for the European Communities recalled its submission to the TMB, namely, that these matters did not fall under the purview of the TMB. The TMB, in its report, did not say anything about these measures not being justified under any particular provision. This was not an admission that the EC had removed its quotas on these countries, although this was something which could be seen in the Official Journal. There had been no difficulty in the EC, for transparency purposes, to provide the TMB with details of the various agreements with non-WTO Members that related to textiles and clothing trade which the EC had entered into, such as Ukraine and Russia. In this respect, the EC had two broad objectives: first, closer cooperation with neighbouring trading partners under broad partnership and cooperation agreements and, secondly, mutually improved market access. In effect, the goal was to achieve the trade liberalization which the ATC itself was looking towards. Regarding the EC's agreement with Ukraine, the quotas had been removed in the context of a comprehensive, mutually beneficial agreement where Ukraine had reduced its tariffs to the same levels as those of the EC and had entered into other commitments in terms of trade liberalization and market access. As explained before, this was not inconsistent with the EC's general approach. It was equally open to WTO Members which wished to discuss such issues with the EC to do so on the same basis.

59. He noted that the ITCB members had raised legal arguments on this matter; however, the CTG's mandate was rather limited in that area. The TMB had been quite right not to enter into these questions as well. The EC did not wish to go into too much legal detail but it wanted to make two basic points. One was that the non-integrated part of the textiles and clothing sector was not yet part

of GATT 1994. The other was that the TMB had accepted the specific characteristics of Article 2.15 which allowed for the elimination of restrictions with WTO Members to fall far short of MFN. This was clearly an exception from the MFN principle; the ATC did not prohibit WTO Members from entering into agreements affecting their quotas with other WTO Members. He questioned if the Members could require more of a situation related to non-WTO Members than from a situation between WTO Members. He also pointed out that trade with the countries concerned was very small and relatively stable compared with WTO Members under quota, where trade was large and growing. Russia and Ukraine were the 33rd and 40th textile and clothing suppliers to the EC. What was different, the EC's exports to these countries were quite large. All these statistics were in the public domain so, this was not an admission, but was just a statement for the purpose of transparency.

60. The representative of Uruguay considered it very important to highlight again the fact that the MFN principle was one of the basic pillars of the WTO and the interpretation that was being presented at this meeting undermined it to such a degree that it could affect the whole of the structure of the Organization. Members of the WTO had agreed to certain rules amongst themselves which would include the kind of restrictions that existed today; in relation to non-Members, the general principles applied. If Members did not follow these principles, it meant that any Member could act as it pleased and MFN was worthless; MFN only for Members was not what the Agreement said.

61. The spokesman for the European Communities responded that the EC was not saying that the principle of MFN had no application and it was not saying that Members could do anything they liked. What it was saying was that for this particular sector, which was not yet part of GATT 1994, and was an area within the WTO which had relatively clear and specific rules, an exemption applied. It was really not possible to draw a conclusion that what was happening with non-WTO Members placed it on a footing which was different from what was happening within the WTO Members.

62. The representative of Canada said he would have fully agreed with some of the points made by the ITCB members if they were talking about the situation after 1 January 2005. But in the meantime, there was an Agreement that clearly treated Members differently. The fact that the Agreement existed underlined the fact that Members had a different situation *vis-à-vis* the various obligations, because the Agreement itself exempted this sector or part of this sector from certain obligations under GATT 1994. If Members took the argument to its logical conclusions, the situation had to be either that there were quantitative restrictions on all countries or quantitative restrictions on no countries, but the ATC recognized that some quantitative restrictions applied only to some countries. All this would become much clearer on 1 January 2005 when this entire sector would be fully integrated.

63. The representative of India doubted if Members could convince each other on this matter. Both GATT 1994 and the ATC were integral parts of Annex 1A of the Marrakesh Agreement Establishing the WTO. It was also clear to India that in the event of a conflict between GATT 1994 and one of the Agreements in Annex 1A, and one of them was the ATC, it was the ATC which should prevail. It did not make sense to say that, since a portion of this trade was not integrated into GATT 1994, therefore, a Member could do whatever it wanted or that GATT did not apply, because, for example, no Member was giving up its anti-dumping duties. Anti-dumping duties continued to be imposed, and anti-dumping duties were very much part of GATT 1994, so how could that be justified?

(vi) Article 3 – Treatment of Quantitative Restrictions Other Than Those Under the MFA

64. The Chairman then referred to Article 3 which addressed the treatment of quantitative restrictions on textile and clothing products other than those under the MFA which are dealt with in Article 2. There were no comments made on this Article.

(vii) Article 4 – Changes in Rules and Procedures

65. The Chairman proposed discussion of the third topic in this subject group, namely, Article 4 which referred to the administration of restrictions by the exporting Members and to the introduction of changes in practices, rules, procedures and categorization of products in the administration of restrictions.

66. The representative of Uruguay emphasized that the issue of changes in rules and procedures did not fall only under Article 4 of the ATC. Certain changes in procedures, for example, those adopted with the purported objective of preventing circumvention, entailed excessive documentation requirements, disproportionate to the alleged problem. These changes also fell under the same general theme. The exporting Members were concerned that changes in rules and procedures in a number of instances had had the effect of undermining and impairing benefits accruing to them under the Agreement. Developing Members' concerns were also based on the fact that Article 7.1(a) required Members to take necessary actions to abide by GATT rules and disciplines for the "facilitation" of customs and administrative formalities, whereas the changes in procedures which had been put into effect had produced the opposite result. In this connection, he called on the CTG to consider these situations involving the impairment of access due, in particular, to changes in rules of origin and to certain related administrative formalities.

67. As submitted in document G/C/W/304, he said the US had fundamentally modified its rules of origin pertaining to textile and clothing products with effect from July 1996, pursuant to its Uruguay Round Agreements Act. These changes had been specifically undertaken for trade policy reasons, targeting only the textiles and clothing sector and were inconsistent with the US' obligations. A number of WTO Members, including the EC, had protested as these changes had disrupted the utilization of existing market access under the ATC. The EC had challenged these changes through an action taken under the DSU, claiming that the US had violated its obligations under a number of agreements, including the ATC, the Agreement on Rules of Origin, the Agreement on TBT and GATT 1994. The changes also violated the obligation under Article 7.1(c) of the ATC which required Members not to discriminate against imports in textiles and clothing sector when taking measures for general trade policy reasons. The US had accepted that the changes had been inconsistent with its obligations and it had impaired the rights accruing to the exporting Members. However, in reverting to the pre-ATC rules, the US had failed to conform fully with its obligations. The rules for some products of particular export interest to developing Members had not been reinstated to the pre-ATC rules. Furthermore, the US had altered the definition of some cotton products; thus, under the modified rules, certain made-up articles containing as little as 16% by weight of cotton had come to be treated as cotton products. The general norm prior to this change had been to consider as cotton products those with cotton as the component of chief weight. This change had expanded the coverage of restrained cotton products, thus reducing the market access possibilities of these products.

68. The representative of Uruguay pointed out that the changes in rules of origin could not be treated as falling under the category of changes in procedures or practices for "implementation or administration" of quota restrictions. A summary of all these changes had been encapsulated at pages 143 and 144 of the TMB's report (English version). The TMB had avoided making a ruling on these changes, although it had recognized that the US had not defended the measure, as described in paragraphs 406 and 415 of the TMB's report. The Body had merely argued 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", and had added in paragraph 416 that "neither has [the Body] 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". He considered that the central issue with respect to changes in rules of origin was the violation of the obligations that they entailed and the resultant impairment of market access accruing to exporting Members. He requested the CTG to conclude that the changes in rules of origin had violated the obligations of the

importing Member concerned, thereby impairing benefits to the exporting Members. Referring to what was stated in their communication (G/C/W/304), the ITCB members also requested the CTG to examine the justification given for changing the definition of certain cotton products, to cover products containing as little as 16% of cotton.

69. He went on to say that Article 1.4 of the ATC required that the particular interests of cotton-producing, exporting Members should be reflected in the implementation of the Agreement, in consultation with them. In this connection, he suggested that the CTG should ascertain if the US had consulted any of the cotton-producing, exporting Members in implementing this change, whether before or after; and whether this change conformed to the purpose of the provision, i.e., to reflect their particular interests in the implementation of the ATC.

70. The representative of the United States recalled that there had been an extensive discussion of the changes in rules of origin in the Council's first stage review as Members would see in the detailed statements in the records of that meeting. The US was clear in its reading of Article 4 that the kind of changes that the US had made in 1996 were permitted by the Agreement as long as they did not upset the balance of rights and obligations that had existed before the change. In fact, the US had consulted with all Members that had expressed concern to them on this issue, including cotton-producing, exporting Members. The US had reached understandings with the EC, as was pointed out, but also with other Members. It remained ready to consult with Members on this matter, which was the proper channel. Consultations should be held first, and if agreement was not reached between the parties, then an action could be brought in the TMB, and then perhaps under the DSU. The US, however, did not believe that the CTG was the proper forum to deal with the issue.

71. The spokesman for the European Communities considered that changes in rules, including changes in rules of origin were not, themselves, illegal. Article 4 of the Agreement provided a relatively comprehensive framework which encouraged Members, in consultations with each other, to reach a mutually satisfactory agreement. The experience of the EC was that it might take time, but that it worked. In these circumstances, all of the necessary procedures were available and if these procedures were followed, results should be satisfactory. If the procedures were not followed, as the US had made clear, this would open up the possibility of complaints to the TMB and possibly to a full-fledged dispute settlement. The encouragement of the Agreement, however, was towards consultations.

72. The representative of Singapore, speaking on behalf of the ASEAN Members of the WTO, referred to the issues pertaining to changes in rules of origin, and said that it was rather well known that the US had fundamentally altered its rules from July 1996. Subsequently, the US had been obliged to revert to the pre-ATC rules under an EC challenge. Unfortunately, the rules had not been fully restored to the previous situation. As these changes had been in violation of the Agreement on Rules of Origin and had been disruptive to access under the ATC and to the full utilization of quotas, it followed that these changes had a negative impact on the balance of rights and obligations of the exporting Members. The TMB seemed to suggest that Members should not implement further changes during the remaining period of ATC; that, however, was not the sole issue relevant to this review. What was relevant in the context of this exercise was to see whether the changes which had already been effected or implemented had had any adverse effects on the rights and obligations of Members. He hoped that the CTG would look at this issue from that perspective.

(viii) Article 8 – Functions of the TMB

73. The Chairman then turned to the last topic in this subject group, Article 8, which addressed the role of the TMB in supervising the implementation of the Agreement and the role of the CTG in overseeing the implementation process.

74. The representative of Uruguay referred to Article 8.1, which specified that the TMB was established to "supervise the implementation of this Agreement, to examine all measures taken under this Agreement and their conformity therewith, and to take the actions specifically required of it by this Agreement ...". Article 8.1 also specified that the TMB's members shall discharge their functions on an *ad personam* basis. It was obvious from this mandate that the TMB's functions were not limited to the resolution of disputes; moreover, the TMB was not limited to relying on notifications and information supplied by the Members themselves. It could decide to seek information from them and to rely on notifications to and reports from other WTO bodies and from such other sources as it might deem appropriate, as stated in Article 8.3. It followed that, consistent with the high expectations placed on its functions, the TMB was authorized to secure information from sources it deemed appropriate. Against this background, he found that, in several instances from its report, the TMB had appeared to have preferred avoiding clear findings and recommendations to the CTG for the purposes of this review. The TMB seemed to view its role, with respect to several issues, only as a dispute settlement organ. It also seemed to have avoided seeking technical input in instances in which it did not possess the necessary tools. These situations, however, had to be balanced with others. When the implementation process started and the TMB began its work, Members had found many faults but it was also very important to recognize that those situations had improved over time and the TMB had managed to find a working environment and procedures which had allowed it to overcome many of those difficulties. That was why he wanted to highlight the current problem, a narrowing down into only dispute settlement. He could not fail to recognize the enormous improvement and the ITCB members thanked the Secretariat, and particularly the Chairman, who had made enormous effort to make the TMB work well. He felt that this had to be recognized publicly in the CTG.

75. The representative of India agreed with the comments made by Uruguay and added his appreciation for the work done by the Chairman of the TMB. He considered, however, that the TMB was only as good as its members and only as good as the information made available to it. Transparency was critical and if information was sought by the TMB and was not forthcoming from Members, this was a serious matter. If Members were concerned about the TMB, an institution which they had created, then they had a fundamental obligation to make available information when the TMB sought it, and even without being asked for it.

76. The representative of Canada agreed with India's comment and with the second half of the intervention by Uruguay with regard to the fact that the TMB had improved and had become much more effective in its work. He thanked the Chairman and the Secretariat for an excellent job. He agreed that the TMB was only as good as both the members of the TMB and the Members which provided information. He disagreed with Uruguay on the beginning of his statement, inferring that the TMB should become more proactive. He did not disagree that there had been times when the TMB might have wished to do so but if Members had concerns on specific matters, they should not sit back and expect the TMB to act. Rather, Members with concerns should bring the issues directly to the TMB. The TMB could only work with the information available, although there were limits as to how far the TMB could go on any particular issue. It could provide an opinion if asked; if it had the required information. He did associate himself with the last statement by India that in terms of the role of the TMB, it had certainly become more effective over time and it had increased both its internal and external transparency.

77. The spokesman for the European Communities agreed with the Members that had said that the TMB had improved over time. One important aspect, which he considered deserved mention, was the methodology applied in respect of disputes. This was a genuine example of transparency and tighter discipline which had worked its way through, in terms of results, over time. He paid tribute to the Chairman and the Secretariat for the work that they had done.

Overall Observations

78. The Chairman stated that, bearing in mind that many delegations had provided detailed comments on many diversified subjects, it would be fair and appropriate to give Members the occasion to make some overall observations and assessment of the review.

79. The representative of Uruguay emphasized the great importance of the Council's major reviews of the ATC's implementation, in particular this second review. The ATC had provided for major reviews to forestall any problems along the way and to take corrective steps to ensure that the implementation process remained on track. This view flowed from ATC Article 8.12, first sentence, which obliged and mandated the CTG to take such decisions as it deemed appropriate, to ensure that the balance of rights and obligations embodied in the Agreement was not being impaired. Also, Members needed the reviews because of the great importance of textiles and clothing trade for developing Members and the systemic significance of the phasing out of the quota restrictions for restoring this sector to the same rules and disciplines of GATT 1994 as were applicable to other sectors. The members of the ITCB had participated in this review, resolved to engage in a constructive dialogue and to ensure both the integrity and the purpose of the review were maintained. They had submitted their detailed analysis of the ATC implementation, and had presented sound arguments and conclusions to establish that the balance of rights and obligations accruing to developing Members was being impaired and, therefore, the CTG should take decisions to restore that balance. Having heard the interventions of other Members, particularly the restraining Members, he wished to offer comments on those interventions and also to make some concrete suggestions for adoption by the CTG.

80. The representative of Uruguay referred to the remit and scope of the review, noting that the US had appeared to argue that the review needed to be confined to measures or developments that had occurred only during the second stage and that it was necessary first to raise differences of views in bilateral consultations, then in the TMB, and so on. Only after carrying out these processes could a matter be raised in the CTG. He was not persuaded of this, but believed that the CTG review could not be restricted in this way, since there was nothing in the Agreement that actually limited its review. He also noted that some Members had appeared to suggest that, as imports into their markets had generally been on the upturn, it should be assumed that the ATC had been working without any problems; here again he had to disagree. The ATC was a legal instrument; it contained contractual rights and obligations and the fulfilment of these rights and obligations was what was required by its implementation. The full and faithful implementation of the provisions of the ATC were, therefore, essential. Justifying any violation or non-fulfilment of legal obligations on the grounds that imports might have advanced could not be considered as valid. Moreover, the purported increases in imports could not be attributed to the implementation of the ATC since few quota restrictions had been eliminated with few commercially significant products being integrated. Therefore, by definition, these aspects could not have been contributory factors to the increases in imports. Also, importing Members had made reference to their perceptions of the drafters' intentions behind particular ATC provisions. This approach was not convincing and he believed it was, to a certain degree, not relevant. The ATC was an integral part of the legal framework of the WTO and its terms deserved to be interpreted in accordance with the same general principles of interpretation as were applied to any other agreement. That included recourse to supplementary means of interpretation, including any negotiating history, to confirm the meaning of the provisions.

81. The representative of Uruguay observed that some Members had asserted that the developing country Members' concerns derived from their perceptions regarding non-fulfilment of some "expectations". To clarify this, he said that their expectations were genuine and valid; they had been grounded in the hope that the provisions of the ATC would be implemented in good faith, in the light of its object and purpose of securing the gradual phasing-out of the quota restrictions during a transitional period, not just at the end of that period. The progressivity of the process was a necessary and inherent condition of full implementation.

82. He considered that some points which had been raised in the review with respect to the implementation of particular provisions of the ATC could perhaps be better addressed while dealing with those specific issues. Therefore, he turned first to the integration process and said that the ITCB members had demonstrated and established through written submissions and interventions in the CTG that the restraining Members had failed to implement their integration programmes in accordance with the object and purpose of the Agreement, precisely because so few quotas had been eliminated. In certain cases, the programmes had not fulfilled the minimum necessary technical requirements, although the purpose of integration could not be relegated to a mere technicality. The purpose of integration was grounded in the Agreement in specific terms, namely, to secure the progressive phasing-out of quota restrictions. The restraining Members were also required to "allow for" continuous autonomous industrial adjustment and increased competition in their markets to facilitate this process. Now, reviewing the process in accordance with the purpose and objective of the ATC, the CTG could not escape the conclusion that the restraining Members had, so far, failed to fulfil their obligations fully. On the idea that there was a transitional period of ten years, there was no disagreement; that right existed and was part of the Agreement. However, over the ten-year period, progressivity and the phasing-out process could not be seen as being mutually exclusive; they went hand-in-hand. The Agreement did not provide that all quota restrictions, or even a large majority of them, could be eliminated only at the end of the ten years. He noted that the restraining Members had again reaffirmed, together with the rest of the Members, that they remain committed to the full and faithful implementation of the ATC, within its timeframe, and not only at the end of the ten-year period, but throughout it. He asked the CTG to take note of this fact and to decide that the restraining Members should utilize the provisions that already existed in the Agreement, relating to the early integration of products and to the elimination of quota restrictions, and to achieve liberalization by the start of Stage 3 of at least 50% of the volume of 1990 imports of products that were under specific quota limits. Furthermore, and in accordance with the objective of liberalizing the restrained products, restraining Members should avoid any downward adjustment of quotas in cases of partial integration of certain categories.

83. The representative of Uruguay recalled that the ATC had established 16%, 17% and 18% as the minima for product integration at various points in the process. The ATC did not establish any ceilings. If, as he understood, the US had drafted its domestic legislation as though these percentages were ceilings, this would not appear to be fully consistent with the obligation under Article XVI, paragraph 4, of the WTO Agreement, which read as follows: "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements." He also commented that, with respect to increases in the rates of quota growth, the submissions and interventions of the restraining Members had demonstrated that the increases which had been made in growth rates in the first two stages had not provided any significant increases in market access. In this regard, the TMB had agreed that increases in growth rates could not substitute for integration of the relevant products. Referring to the provisions for small suppliers, he noted that the methodology used by Canada and the US in implementing Article 2.18 of the ATC, had not been consistent with the purpose provided in Article 1.2, nor was it consistent with the ordinary textual reading of Article 2.18 itself. As for least-developed country Members, the restraining Members had failed to give any meaning or effect to the relevant provisions of the Agreement, including to the Ministerial Decision in that regard. The representative of Uruguay, therefore, requested the CTG to decide that the other restraining Members should apply the methodology used by the EC in implementing the growth-on-growth provisions for small suppliers, and should extend the same treatment to the least-developed country Members; and, where possible, should eliminate quota restrictions on imports from such Members. Further, the restraining Members should advance the application of the growth-on-growth provisions with respect to other restrained Members to 1 January 2000, and should increase any resultant growth rates lower than 6% to that percentage.

84. The representative of Uruguay further noted, with respect to other specific obligations in the ATC, that the ITCB members had shown through their submission and the discussions at the Council's meetings that there had been several instances of violations of these obligations by certain restraining Members. Referring to the question of the introduction of new restrictions, Article 2.4, he recalled that there had been instances where new restrictions on ATC products had been introduced in violation of the provisions of the Agreement. These included the new restriction on Turkey's exports of underwear to the United States and Turkey's own restrictions on exports from a number of Members following the implementation of its customs union with the EC. He then referred to the provisions of Articles 2.11 and 2.17 and specifically to the continuation of discriminatory, procedural requirements. He noted with satisfaction the confirmation given by Canada and the EC that, following the integration of products, the related procedural requirements such as the issuance of export licenses would also be removed. He disagreed, however, with Canada's suggestion that information with respect to such actions needed to be provided to the TMB only as a matter of courtesy. He believed that Articles 2.6, 2.8 and 2.11 required that details of actions to be taken pursuant to the integration process, needed to be notified to the TMB. In this connection, the failure by the US to notify the withdrawal of the visa requirement on integrated products had become an important and serious issue. The TMB had also stated in paragraph 85 of its report that this requirement could be deemed necessary only in relation to the implementation of restrictions. After the elimination of those restrictions, these requirements became redundant and discriminatory. For full and faithful integration of the relevant products, these requirements should have been withdrawn. Accordingly, he requested the CTG to decide that visas, or any similar requirements on integrated products, should be withdrawn.

85. The representative of Uruguay also referred to Article 1.6 and raised the matter of the elimination of restrictions on non-WTO Members while maintaining them on WTO Members. He said that the EC and Canada had argued that the ATC permitted them to eliminate any restriction and on a non-MFN basis and, without saying so, they seemed to refer to Article 2.15 of the ATC. He did not consider this argument to be persuasive, because Article 2.15 said that "Nothing in this Agreement shall prevent a Member from eliminating any restriction maintained pursuant to this Article ...". However, Article 2.15 was not relevant in the case of the restrictions in question. Those restrictions on Russia and others that were eliminated by the EC, were not restrictions maintained under Article 2 or even under the ATC. Therefore, the argument by the restraining Members was not correct. On the issues of changes in rules of origin, he requested the CTG to decide that the US should bring its rules into conformity with its obligations and restore the balance of exporting Members' rights to access accruing to them under the Agreement. Concerning the cotton-producing, exporting Members and recalling the ITCB members' submission in document G/C/W/304, he requested the CTG to take note of the expressions of dissatisfaction in this regard and to stress the need for the restraining Members to give full meaning and effect to the relevant ATC provisions. On the question of circumvention, he requested the CTG to take note of the developing Members' views and comments concerning the extent of the alleged problem of circumvention. He also requested the CTG to reiterate the importance of cooperation in addressing problems arising from circumvention; to emphasize the need for any remedies to be proportionate to the problem; and to recommend that any measures taken should not cause an unnecessary burden for governments or economic operators or impede the utilization of market access by the exporting Members concerned. The representative of Uruguay also referred to the issue of the use of the transitional safeguard mechanism and noted with satisfaction the fact that these actions had diminished over time. He considered that the use of transitional safeguards had not been consistent with effective implementation of the integration process, as all but a few of these actions had been found to be unjustified. He, therefore, requested the CTG to take note of this situation in its conclusions and to recommend that, during the remaining three years of the Agreement, safeguards should be applied with utmost restraint, consistent with the provisions of Article 6, and, importantly, also consistent with effective implementation of the integration process.

86. On the subject of anti-dumping actions, the representative of Uruguay reiterated the concerns of ITCB members that applying anti-dumping measures to products that were already under restriction implied double jeopardy. Therefore, he requested the CTG to decide that, in order to avoid double jeopardy to the exporting Members concerned, the restraining Members should agree not to initiate anti-dumping actions against products under quota restriction. Furthermore, and in order to lend certainty to trade, restraining Members should not take such actions during a period of two years after the elimination of quotas. On the issue of autonomous industrial adjustment, he believed that the CTG should emphasize the necessity of facilitating the integration process and, in this context, the importance of allowing continuous autonomous industrial adjustment and increased competition in the markets and of providing further information on this process to assist the review of progress in this regard. He referred to a comment made earlier by the EC (paragraph 49) in which its spokesman had used as justification for his views regarding the scope of Article 1.5 text taken from a book called "The Negotiating History of the Agreement on Textiles and Clothing" which had been published by the ITCB. The implication seemed to be that it reflected the ITCB members' position or views. He referred to the Introduction of that publication where the authors said, "We are fully aware that such interpretation is no more valid than any other opinion on the matter" and further on they said "They [their conclusions] should not be considered as reflecting the views of the ITCB or any of its member countries".

87. In conclusion, the representative of Uruguay said that he believed that the implementation of the ATC by developed, importing Members had impaired the balance of rights accruing to developing, exporting Members under the Agreement, and the CTG should so conclude. This position of the ITCB members derived from instances of violation of obligations by certain restraining Members and from instances in which the attainment of the objectives of the Agreement had been impeded. In some other cases, the implementation of certain ATC provisions had not been consistent with the object and purpose of the ATC or had not been given full meaning and effect. Therefore, he asked the CTG to take decisions as he had suggested, pursuant to its mandate under Article 8.12. He also suggested that, pursuant to its mandate under Article IV.5 of the Marrakesh Agreement Establishing the WTO, the CTG should decide and resolve to regularly oversee the functioning of the ATC and progress in the implementation of the Agreement, particularly in view of continuing problems identified in the review process.

88. The representative of Hong Kong, China said that the Council's agenda had given the Members an opportunity to air their views on all of the relevant provisions of the ATC; however, this was only the first step towards achieving the purpose of the major review. The purpose of the review was: first, to oversee the implementation of the ATC, and second, to take decisions to ensure that the balance of rights and obligations embodied in the ATC was not being impaired. As regards the implementation of the ATC, various shortcomings or outright violations of ATC provisions had been identified. First, integration was far from satisfactory, perhaps less in respect of specific provisions than in the overall balance of rights and obligations. But, even in the implementation of specific provisions, he noted that the US had notified its Stage 3 integration programme but had yet to confirm that it would be ceasing to apply the corresponding administrative arrangements under Articles 2.11 and 2.17. When textiles and clothing products were integrated, it was absolutely clear that all provisions of the ATC would cease to apply. Similarly, the requirement to notify the Stage 3 integration programmes one year in advance was also quite clear; this provided predictability and certainty. However, to submit such a notification, but, at the same time, not to be prepared to confirm whether the integration would be complete in all respects, created the very opposite of predictability and certainty, and was clearly not in accordance with the ATC.

89. Second, there were cases where Article 2.4 had been violated. At the Council's previous meeting, the US had cited Article 4 as justification for its restraint on Turkey. He requested the CTG to note that the US had chosen not to supply this information to the TMB, notwithstanding the fact that the TMB was required, under Article 8.1, to examine all measures taken under the ATC. Further, the TMB was authorized, under Article 8.3, to seek any information or necessary details from

Members, irrespective of whether the measure had to be notified. As such, Members had a duty to supply such information or details. He noted that the TMB had already concluded that Article 4 did not permit evasion of Article 2.4. The US restraint on Turkey's exports violated that provision. Another case where there had been a violation of Article 2.4 was the restraints maintained by Turkey following the conclusion of its customs union with the EC.

90. The representative of Hong Kong, China continued with a third matter, namely, the problems in the application of Article 2.18 by the US and Canada. He said that small suppliers had been "short-changed" for seven years in the ATC implementation process, but he was encouraged that the US and Canada would be applying an additional 27% growth rate increase factor for Stage 3. The CTG could take note that this will go some way to provide recompense.

91. He then turned to the second purpose of the major review – to ensure that the balance of rights and obligations was not upset. The three integration stages which had been implemented or notified to date, had done, or would do, little or nothing to achieve progressive liberalization, which was part of the object and purpose of the ATC. Implementation of Article 1.5 also did not appear to have made any contribution, although he acknowledged that there was insufficient information to make a proper assessment. Members of the ITCB had made clear their concerns about the balance of rights and obligations under the ATC and the CTG now needed to consider what decisions to make in the light of this. In conclusion, he joined with Uruguay in recalling the CTG's mandate under Article IV.5 of the WTO Agreement, as reiterated by Ministers at the Singapore Ministerial Conference, as well as the Council's own decision made after the first major review, that the CTG should decide and resolve to regularly oversee the functioning of the ATC and the progress in its implementation, particularly during the last three years of the ATC.

92. The representative of Canada acknowledged that it was very important to get the facts and a variety of views on the table. It was agreed that the ultimate purpose of the ATC was the full integration of the textiles and clothing sector by 1 January 2005, with the consequential result of the elimination of all remaining non-GATT consistent measures, which should be reflected in the report of the CTG. Second, it was agreed that there was a ten-year transitional period. He saw the ten-year transitional period as an adjustment period with the transition path being that defined by the terms of the ATC. This was based on two key features that work hand-in-hand, namely, integration and growth-on-growth. Any expectations or evaluation of how the transitional period operated should be based on the specific elements of the ATC. In this regard, from Canada's perspective, the adjustment path and transitional period were operating as they should and his market was adjusting smoothly. He argued that the ATC did not specify when, in which quotas or how many quotas had to be eliminated at any point during the transitional period. It was very clear as to what would happen on 1 January 2005, that all ATC restraints, including bilateral restraints that were inconsistent with other GATT provisions had to be eliminated. Therefore, he did not agree with the conclusions as suggested by Uruguay as regards how the integration process was working, both in terms of how it had operated and in terms of what the outcome had been. There had been a long discussion and Members had expressed their views on the situations of small suppliers, least-developed Members and cotton-producers. It had been claimed that restraining Members had not given meaningful effect to many of these provisions. Canada did not agree. As indicated earlier, there had been a meaningful increase in market opportunities in Canada, as data had indicated; people had been taking advantage of the market opportunities. This had resulted in a significant increase of imports from developing Members, in terms of Canadian dollars and in terms of the share for both imports into Canada and the Canadian domestic market. He did not share the conclusions as expressed by the ITCB members with regard to the implementation of a number of the provisions, such as small suppliers. Likewise, there was a difference of view on autonomous industrial adjustment. However, the Canadian industry had been undergoing adjustment and had continued to undergo adjustment, both in terms of the products it produced and the products it no longer produced; its production facilities; whether it was closing a plant or opening a plant; and in terms of jobs. In this regard, he said that additional information was available from Canada's notification to the TMB and from Canada's Trade Policy Review, conducted

in December 2000. The fundamental point was that Canada remained fully committed to the implementation of the ATC and to the full integration of this sector by 1 January 2005. Second, Canada was meeting its legal obligations and was proceeding through the transition process as expected. Indeed, in some areas it had gone beyond the strict terms of the Agreement. As an example, he noted the number of Members that had benefited from the small supplier provision. As a result of meeting these legal obligations, there had been a significant increase in the market access opportunities for developing Members in Canada. Clothing imports from developing Members were up 79% and their share had reached 47% of the Canadian market. In Canada's view, the CTG should conclude that the implementation of the ATC was on track and that the balance of rights and obligations of the ATC had been maintained.

93. The representative of Turkey disagreed with the views expressed by Uruguay on behalf of the ITCB members, as well as the opinions expressed by Hong Kong, China. Turkey strongly believed that the findings of the DSU panel and the Appellate Body decision, which Turkey had fully respected and implemented, simply could not be extended to third countries. He also disagreed with what had been said by some Members in the previous meetings regarding the US restrictions on a particular textile item from Turkey.

94. The representative of Bangladesh disagreed with the comments by Canada that all the provisions of the ATC had been implemented properly. It was Bangladesh's conclusion that paragraph 2(ii) of the Ministerial Decision on Measures in Favour of LDCs and Article 1.2 of the ATC had not been implemented at all. The restraining Members had failed to give any meaning to these provisions and there was a need to take urgent measures in order to give at least some meaning to these provisions. Regarding the application of anti-dumping duty, because of an action taken by one Member, Bangladesh's textile products had sharply declined. He believed that its rights and obligations had been impaired by this action.

95. The representative of the United States recalled the conclusions and recommendations made by Uruguay on behalf of the ITCB members, particularly the argument that the US, among others, had not fulfilled its obligations under the ATC. This was the fundamental point of disagreement between the US and the ITCB members. The US believed that it had fulfilled its obligations, not just the strict legal obligations, but, in fact, other less specific obligations that existed in the ATC. It was clear that imports had increased into the US market and that was a factor to be taken into account in the evaluation of some of the provisions of the ATC and how they had been implemented. However, this could never be a pretext for failing to fulfil a legal obligation. With respect to the specific recommendations that had been put forward, he did not see a large measure of agreement that could be reached in the Council on those specific suggestions. He referred, for example, to specific suggestions of integrating 50% of the volume of imports under restraint or making no downward adjustment for part categories that had been integrated, which simply went far beyond what was contemplated when the Agreement was negotiated. The US had a very clear idea of what it was that it had agreed to. The US made no secret of its interpretation of various provisions of the ATC when it was negotiated and when it went into effect. Now, to put forward suggestions that would never have been agreed to at the time of negotiations was not the way to go forward. He did not think that it would be necessary at that point to respond in detail to each of the suggestions or recommendations that had been put forward, but he did consider that these would be beyond what was going to be possible in the Council. He did recall that the US had put forward its concerns with respect to the implementation of Article 5, on circumvention and Article 7, on market access. He felt that it would be appropriate, given the scope of the problem that the US faced with circumvention, if the Council would conclude that those Members that were involved in circumvention issues should be instructed to find effective ways to deal with the problem. With respect to market access issues, he said that this was an area where the CTG would be doing a favour to those Members that maintain basically closed markets for textiles and clothing to make it clear that this was not the way of the future. He suggested a recommendation to the effect that an effective implementation of this commitment to achieve

market access would be something that would serve the importing markets, as well as those that would be exporting to those markets.

96. The spokesman for the European Communities observed that the current debate was about perception and Members did have different perceptions on the implementation of the ATC; the EC had taken part in this debate with a view to making a constructive contribution. In sum, the European Communities had fulfilled its obligations which were incumbent upon it under the Agreement; it was not in breach of the requirements. He re-confirmed the EC's full commitment to the ATC and, in particular, to the date of 1 January 2005; the implementation of the Agreement was basically on track. He reiterated that, from the EC's point of view, it was not a question of impairment of the balance of rights and obligations, as some Members had put forward.

97. The representative of India considered the discussion which had taken place on several subjects, including the introduction of new restrictions which were not justified under the ATC and the elimination of restrictions on non-WTO Members not justified either under the ATC or under GATT. He recalled the problems of the least-developed Members, as described by Bangladesh, as well as the problem of anti-dumping actions and autonomous industrial adjustment. The problem with the implementation of the ATC was not so much the application of the integration percentages of which the bare minimum had been applied in any case. One could not simply meet this obligation and declare that the rest of the Agreement was on track also. There were other obligations to ensure that market access would not be taken away through actions such as anti-dumping, changes in the rules of origin or visa requirements. These had important effects on market access. It was not the contention of the developing Members that the restraining Members had defaulted on their obligations; rather, the problem was that market access had been decreased by, what he considered to be violations of their obligations under the ATC. That was the point that had been made by the submissions of the ITCB members. Concerning the implementation of Article 7, if the problem was that Uruguay Round commitments had not been met, there was the possibility of recourse to dispute settlement. Finally, he took note of the commitment made by the developed country Members concerning the final termination of the ATC and all of the quotas under it.

Chairman's Summing-Up

98. The Chairman thanked all delegations for the constructive and professional debate. Although views and perceptions were quite different, they had been presented in a constructive manner. He offered a few comments and observations on the discussion and, in particular, on how they might be framed into a useful and helpful report. As had been suggested, his goal was to develop a report that would be brief and to the point, with conclusions and recommendations where possible. It was clear that on some subjects, there were wide gaps in the understandings and perceptions, but on some other subjects there appeared to be a possibility of reaching some conclusions. This would require a considerable effort by all. Looking at the possible content of the report, and beginning with the least controversial part, he considered that it should begin with an introductory section which would set out the statutory requirements of Article 8 and describe the topics covered, documentation provided and the dates of the meetings. The report could then reflect certain factual matters including the importance of textiles trade as a source of employment and export earnings for many developing countries. Also, it should reflect the importance for developing country Members of the elimination of the longstanding quota system and the return of trade in textiles and clothing to the full application of the WTO rules. The report could also include a reaffirmation by all Members of their commitment to achieving the full and faithful implementation of the ATC. It should be possible to find words calling on Members to give effect to the provisions in the ATC relating to small suppliers, new entrants, cotton-producing exporters and least-developed Members. The subject of transitional safeguards should also be included, urging continued sparing use, fully consistent with the provisions of Article 6, during the remaining three years of the ATC.

99. The Chairman also said that the report should note that some Members had applied Article 2.15 and at the same time it should encourage Members to use the liberalizing provisions of both Articles 2.10 and 2.15 in the third stage. On the topic of circumvention, the Council could emphasize the need for close cooperation in addressing the problem, in accordance with the provisions of Article 5. On the question of improvements to market access, he envisaged some form of words drawn from Article 7 as a basis for an understanding. Similarly, to reflect the concerns about autonomous industrial adjustment and increased competition in their markets, it might be acceptable to note the need for continuous adjustment and to recall the provisions of Article 1.5. Concerning the importance of on-going supervision of the implementation process by the TMB, he hoped that delegations could come to a text stressing the need for full and timely notification and for effective supervision of the Agreement. Similarly, relating to the importance of the oversight function of the CTG, the report should reiterate such necessity.

100. The Chairman noted that there were other subjects where it was clear from the discussion that the views and perceptions were widely differing. For these areas, it was his intention to hold consultations to identify which conclusions could be agreed upon. In this context, he identified the views of Members on the progress achieved in the implementation of the ATC up to the present and what was required to obtain the objectives and goals of the ATC. Second, there was an assessment of the programmes of integration as a means of achieving market access liberalization. Third, was the issue of the progress in the removal of the quotas, while a further element was the impact of the implementation of the growth-on-growth provisions. He also referred to the differing views on the actions taken by some Members, such as the introduction of new restrictions, maintaining visa requirements, removal of quotas on non-WTO Members, and the use of anti-dumping measures on restrained products. This list of issues was by no means fixed or exhaustive, but he used it to illustrate this thinking at this point. It was his intention to hold consultations on these issues and when he considered that he was in a position to put forward a text, he would convene another meeting of the CTG. To introduce certain flexibility, he asked participants to agree to waive the ten-days rule for convening the meeting, so that he could call the next meeting of the CTG on this review on short notice. The Council so decided.

101. The Chairman also recalled that the current composition of the TMB had been set by the General Council in 1997, for the period 1998-2001, and that a decision on the composition for Stage 3 had to be taken by the end of this year. He had begun consultations on this matter and intended to continue these consultations in the coming days. It would be his proposal that he report the outcome of these consultations to the General Council when it meets in December. The Council so decided.
