WORLD TRADE ORGANIZATION

G/L/398
20 October 2000

(00-4226)

REPORT (2000) OF THE TEXTILES MONITORING BODY

1. This report is presented by the Textiles Monitoring Body (TMB) pursuant to the decision adopted by the General Council on 15 November 1995 on the procedures for an annual overview of WTO activities and for reporting under the WTO (WT/L/105).

2. Since the adoption of its Report (1999) (G/L/318), i.e. 14 September 1999 to 10 October 2000, the TMB has held 12 meetings. The detailed reports of these meetings are contained in G/TMB/R/58 to 69.[1] The present report provides a summary of the matters referred to and/or taken up by the TMB during the period as above, together with the main elements of the conclusions it reached and the related actions it took with respect to them, except for the issues discussed at the last meeting of the Body (10 October 2000) which will be reflected in G/TMB/R/69.[1]

I. INTEGRATION OF PRODUCTS COVERED BY THE AGREEMENT ON TEXTILES AND CLOTHING (ATC) INTO GATT 1994

Notifications under Article 6.1 of the ATC

3. The TMB took note of the notification made pursuant to Article 6.1 by Mongolia that it did not retain the right to use the provisions of Article 6[2] (G/TMB/R/65, paragraph 10). It also took note of the notification by Latvia that it wished to retain the right to use the transitional safeguard provided for in Article 6.1 (G/TMB/R/68, paragraph 5).

Notifications under Articles 2.6 and 2.7(b), as well as 2.8(a) and 2.11 of the ATC

4. The TMB reviewed under Article 2.21 the notifications made pursuant to Articles 2.6 and 2.7(b), as well as 2.8(a) and 2.11, by Latvia. With regard to the fact that the calculation of the share of the products integrated was made on the basis of the volume of imports of 1994 instead of 1990, the TMB understood that 1994 was the first full statistical year based on HS lines in Latvia. The TMB observed that a number of products falling under "ex HS lines" in the Annex to the ATC were included in the integration programme for Stage 1 and that two products in Stage 2 which were integrated at the HS 8-digit level had also been integrated at the 6-digit level, the respective imports for those products being counted twice. The TMB noted, however, that even if the volume of imports of the "ex HS line" products, as well as the volume of those of the products integrated at the 8-digit level, which had also been integrated at the 6-digit level, were not counted, the volume of imports of the products integrated for Stages 1 and 2 taken together would still amount to no less than 33 per cent (i.e. the 16 per cent mentioned in Article 2.6 plus the 17 per cent mentioned in Article 2.8(a)) of the volume of Latvia's total imports in 1994 of the products falling under the coverage of the ATC. The TMB also noted that, in accordance with Articles 2.6 and 2.8(a), the

[1] G/TMB/R/69 will be issued later, upon its adoption by the TMB.

[2] Article 2.9 of the ATC states that "Members which have notified, pursuant to paragraph 1 of Article 6, their intention not to retain the right to use the provisions of Article 6 shall, for the purposes of this Agreement, be deemed to have integrated their textiles and clothing products into GATT 1994. Such Members shall, therefore, be exempted from complying with the provisions of paragraphs 6 to 8 and 11" [of Article 2].

products integrated for both stages included products from the four groups: tops and yarns, fabrics, made-up textile products, and clothing (G/TMB/R/68, paragraph 6).

Late Notifications

5. With respect to notifications received by the TMB after the respective deadlines foreseen in the ATC, the TMB reiterated that its taking note of late notifications was without prejudice to the legal status of such notifications.

II. ELIMINATION OF RESTRICTIONS PURSUANT TO ARTICLE 2.15 OF THE ATC

6. The TMB reviewed the notification made by Norway under Article 2.15. According to this notification, in order to contribute to the objective of integration of textiles and clothing into GATT 1994 and with particular reference to Article 2.15, Norway had decided to eliminate all remaining quantitative restrictions on textile imports. Therefore, the restraints applied on imports from Indonesia, Malaysia and Thailand of products of category 70 (fishing nets) will, in accordance with Article 2.15, be rescinded on 1 January 2001. The Members affected had been informed in advance, in accordance with Article 2.15. The TMB commended Norway for the early elimination of all the restrictions it maintained under this Agreement (G/TMB/R/68, paragraph 7).

III. TRANSITIONAL SAFEGUARD MEASURES INTRODUCED UNDER THE ATC

Safeguard Measures Introduced by Argentina

A. Measures applied on certain imports from Brazil

7. The TMB examined, pursuant to Article 6.11, the provisional safeguard measure applied by Argentina on imports of woven fabrics of cotton and cotton mixtures from Brazil, consisting of five quotas on imports of products of categories 218, 219/220, 224, 313/317 and 613/617/627. Argentina had decided to apply these restraints pursuant to Article 6.11 and for a duration of three years. Since the consultations held between the two Members had not resulted in mutual understanding as to whether the situation called for restraint on the imports of these products, Brazil requested the TMB to examine the matter and to make appropriate recommendations in accordance with Article 6.11. In conducting its detailed examination, as reflected in the report of the respective meeting, the TMB made, *inter alia*, the following conclusions and recommendations:

(i) As regards products of categories 218, 219/220, 224 and 313/317, the TMB concluded that it had not been demonstrated that these products were being imported into Argentina, at the time Argentina had decided to introduce a safeguard measure pursuant to Article 6.11, in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. Therefore, the TMB recommended that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil;

(ii) With respect to products of category 613/617/627, the TMB recognized that the domestic industry of Argentina had been affected by unfavourable developments, and that the difficulties experienced did not seem to be over. As to the causes of the problems identified, the TMB reached the preliminary conclusion that such difficulties could arise from multiple reasons having a mutually reinforcing effect. However, for reasons explained in its report, the TMB did not make a final determination as to whether increased imports of these products had caused serious damage to the domestic industry of Argentina producing like and/or directly competitive products. Notwithstanding that fact, keeping also in mind that the transitional safeguard measure had already been implemented for almost three

months prior to the TMB's examination of the matter and that the TMB had to make appropriate recommendations to the Members concerned, the Body noted that imports by Argentina of products of category 613/617/627, originating in Brazil, had not increased sharply and substantially during the period referred to in Article 6.8 (imports from Brazil had actually decreased in 1998 compared to 1997, and this declining trend seemed to continue during the period January-April 1999). The TMB recommended, therefore, that Argentina rescind the safeguard measure introduced against imports of products of this category originating in Brazil.

8. Noting that Argentina had invoked the provisions of Article 6.11, the TMB also made a number of observations in this regard. It noted, *inter alia*, that the procedural requirements defined in Article 6.11 had been met. The TMB also observed that apart from references to continuing damage, the information given by Argentina did not provide an analysis of the highly unusual and critical circumstances that would have warranted an action pursuant to Article 6.11. The Body reiterated its view, expressed on previous occasions, that in cases where the provisions of Article 6.11 were invoked the expectation was that the elements envisaged in Articles 6.2, 6.3 and 6.4 would indicate, as unambiguously as possible, the highly unusual and critical nature of the circumstances. The TMB was of the view that unless such circumstances were met, any action taken under Article 6 should be preceded by consultations between the parties. In the light of the conclusions reached with respect to the specific product categories subject to the safeguard measure and the observations it had made, the TMB noted that the recourse by Argentina to the provisions of Article 6.11 had not been appropriate (G/TMB/R/58, paragraphs 4 to 45).

9. Following this examination, the TMB received a communication from Argentina, pursuant to Article 8.10, wherein it conveyed its inability to conform with the recommendations the TMB had made, namely, that the safeguard measure introduced by Argentina on imports from Brazil of products of categories 218, 219/220, 224, 313/317 and 613/617/627 should be rescinded. Argentina considered that it had complied with the provisions of Article 6 of the ATC and also that its recourse to the provisions of Article 6.11 had been justified by the circumstances, as it had been substantiated by the information it had provided. The communication by Argentina also identified certain aspects of the TMB's examination of the matter, regarding which, in the view of Argentina, the TMB had either appeared to impose standards going beyond what was prescribed under Article 6, or the Body's examination had not satisfied the requirements specified by certain provisions of the ATC. Having also heard the position taken by Brazil, the TMB gave thorough consideration to the arguments put forward by Argentina and answered them in detail. The TMB concluded that the reasons presented by Argentina for its inability to conform with the Body's recommendations did not lead the TMB to change the conclusions and recommendations it had made during its examination of the measures pursuant to Article 6.11. The TMB recommended, therefore, that Argentina reconsider its position and that the transitional safeguard measure introduced provisionally by Argentina on the imports from Brazil of products of categories 218, 219/220, 224, 313/317 and 613/617/627 be rescinded forthwith (G/TMB/R/60, paragraphs 4 to 25).[3]

[3]Subsequently Brazil requested the Dispute Settlement Body to establish a panel with respect to the above-mentioned transitional safeguard measure since the matter remained unresolved in spite of the TMB's recommendations (WT/DS190/1). On 20 March 2000, the DSB agreed to establish a panel in accordance with the provisions of Article 6 of the DSU, with standard terms of reference. On 27 June 2000, both Members informed the Chairman of the Dispute Settlement Body that Argentina had withdrawn the transitional safeguard measure. This, in the view of Brazil, "reflect[ed] a mutually agreed solution on the basis of the present situation". Therefore, Argentina and Brazil agreed to suspend, for a period not exceeding 12 months, the procedures for the composition of the panel, within which period Brazil would retain the right to resume the procedures for the composition of the panel from where it stood on the date of the joint communication (WT/DS190/2).

B. Measures applied on certain imports from Pakistan

10. The TMB examined, pursuant to Article 6.11, the provisional safeguard measure applied by Argentina on imports of woven fabrics of cotton and cotton mixtures, consisting of five quotas on imports from Pakistan of products of categories 218, 219/220, 224, 313/317 and 613/617/627. Argentina had decided to apply these restraints pursuant to Article 6.11 and for a duration of three years. The consultations held between the two Members did not result in mutual understanding as to whether the situation called for restraint on the imports of the above-mentioned products.

(i) The TMB, having heard the arguments presented by both Members, decided not to undertake a more detailed examination of the measure affecting imports of the products of categories 218,219/220, 224 and 313/317, since these measures, *inter alia*, were similar to those taken by Argentina on imports of the same products originating in Brazil and were applied for the same period and pursuant to the same provisions of the ATC, and also since the factual information on the basis of which the determination of serious damage being caused to Argentina's domestic industry had been made was the same. The TMB, therefore, reiterated its previous conclusions (see also paragraph 7(i) above) according to which Argentina had not demonstrated that these products were being imported into Argentina, at the time it had decided to introduce a safeguard measure on them pursuant to the provisions of Article 6.11, in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. The TMB recommended, therefore, that Argentina rescind the provisional safeguard measure introduced on imports of these products from Pakistan.

(ii) The TMB decided to proceed to the examination of the measure on imports of products of category 613/617/627 since, in the case of the restraint applied on imports of these products from Brazil (see paragraph 7(ii) above), it had not made a final determination as to whether increased imports had caused serious damage to Argentina's domestic industry producing like and/or directly competitive products. Rather, it had reached conclusions and adopted a recommendation on the basis of additional considerations which would not necessarily be applicable to the measure affecting imports from Pakistan. After having conducted a detailed examination (reflected in the report of the respective meeting), the TMB concluded that it had been demonstrated that products of category 613/617/627 were being imported into Argentina, at the time Argentina had decided to introduce a safeguard measure pursuant to the provisions of Article 6.11, in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products. The TMB found also that the serious damage caused to Argentina's industry could be attributed, *inter alia*, to increased imports from Pakistan. The TMB noted, however, that Argentina's industry producing products of category 613/617/627 had already started to make adjustments and that these efforts had already produced temporary results, such as a slight increase in output in 1997. Hence, the TMB was of the view that a shorter period of time than the maximum timeframe envisaged in Article 6.12(a) seemed to be sufficient for Argentina's industry to adjust. Therefore, the TMB recommended that Argentina rescind the transitional safeguard measure on imports from Pakistan of category 613/617/627 products by 31 January 2001, i.e. after eighteen months of application (G/TMB/R/61, paragraphs 5 to 59).

11. Following this examination, the TMB took note of a communication by Argentina informing the Body that it was the intention of Argentina to comply with the recommendations made by the TMB (G/TMB/R/63, paragraph 5). Subsequently, the TMB reviewed and took note of another communication from Argentina which transmitted the text of a resolution of the Argentinian Ministry

of the Economy and Public Works and Services which implemented in full the recommendations made by the TMB, noted in paragraph 10 above (G/TMB/R/66, paragraphs 4 and 5).

C. Measures applied on certain imports from Korea

12. The TMB examined, pursuant to Article 6.11, the safeguard measure applied provisionally by Argentina on imports from Korea of woven fabrics of synthetic filament, whether or not impregnated, consisting of three quotas on products of categories 619, 620 and 229/629. Argentina had decided to apply these restraints pursuant to Article 6.11 and for a duration of three years. The bilateral consultations between the two Members had not produced agreement. In conducting its detailed examination (reflected in the report of the respective meeting), the TMB reached the following conclusions:

(i) With respect to the products of category 229/629, the TMB was unable to identify, in its thorough analysis of the developments affecting Argentina's industry, any significant element of the case where it could find that the situation corresponded to the circumstances defined in Article 6.11. The Body concluded that Argentina had not demonstrated successfully that these products were being imported into Argentina in the reference period (as defined in Article 6.8), in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products and, in particular, as to substantiate the highly unusual and critical circumstances where delay would cause damage that would be difficult to repair. The TMB recommended, therefore, that Argentina rescind the safeguard measure applied provisionally on imports of these products originating in Korea;

(ii) As regards the products of category 619, the TMB concluded that these products were being imported into Argentina in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products. The TMB found also that the serious damage caused to Argentina's industry could be attributed, *inter alia*, to the increased imports of such products from Korea. In light of the observations made in its report, the TMB found, furthermore, that the highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, as referred to in Article 6.11, had existed and that, therefore, Argentina's recourse to the provisions of Article 6.11, in this case, had been justified. However, the TMB noticed that the level of the restraint applied by Argentina had been fixed below the minimum level applicable during the reference period defined in Article 6.8. Having examined the arguments provided by Argentina concerning the reasons for this gap, the TMB recommended that the level of the restraint be increased in order to reflect the actual level of trade achieved during the reference period. It also recommended that, should the restraint remain in place for more than one year, the provisions of Article 6.13 (regarding annual growth and flexibility) be fully implemented by Argentina;

(iii) With regard to products of category 620, the TMB concluded that Argentina had not demonstrated successfully that these products were being imported into Argentina in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products. This also implied that Argentina's recourse to the procedures of Article 6.11 had not been appropriate. The TMB recommended, therefore, that Argentina rescind the provisional safeguard measure applied on imports of these products from Korea (G/TMB/R/64, paragraphs 4 to 75).

13. Following this examination and with reference to Article 8.9 of the ATC, the TMB observed at its meeting, on 19 July 2000, that it had not as yet received any official information from Argentina

concerning the implementation of the recommendations the Body had made, and decided to request information from Argentina in this regard. At the subsequent meeting the TMB took note of two communications by Argentina. The first informed the Body, in response to its request for information, that it was the intention of Argentina to comply with the recommendations and the second transmitted the text of the resolution of the Ministry of the Economy of Argentina implementing in full the recommendations made by the TMB (G/TMB/R/67 paragraph 5 and G/TMB/R/68, paragraphs 8 and 9).

IV. NOTIFICATIONS UNDER ARTICLE 3 OF THE ATC

A. Notification under Article 3.1

14. The TMB took note of a notification made under Article 3.1 by Mongolia in which Mongolia stated that, with reference to Article 3.1, it did not maintain restrictions on textile and clothing products (G/TMB/R/65, paragraph 8).

B. Notifications under Article 3.3

15. The TMB considered and took note of a notification received from the European Community, under Article 3.3, for the Body's information, of agreed changes to the consultation levels maintained in respect of two product categories *vis-à-vis* Egypt. According to this notification, since such consultation levels had been introduced in the context of a preferential trade agreement with Egypt, the agreed changes affecting the consultation levels for 2000 and 2001 were being notified under Article XXIV of the GATT (G/TMB/R/61, paragraph 60).

16. The TMB took note of a joint communication from the European Community and Turkey, consisting of a copy, for the TMB's information pursuant to Article 3.3, of a joint communication from the parties to the European Community/Turkey Customs Union to the Chairman of the Committee on Regional Trade Agreements, "concerning details of changes for the year 2000 in respect of the quantitative limits applied by Turkey on its imports of certain textiles and clothing products from certain WTO Members in conformity with its commitments arising out of the customs union and with the provisions of Article XXIV of GATT 1994". This taking note was without prejudice to the rights and obligations of Members under the WTO (G/TMB/R/65, paragraph 9).

V. COMMUNICATIONS RECEIVED BY THE TMB

A. Communication by Argentina

17. The TMB took note of a communication from Argentina informing the Body that, following consultations held with Korea, Indonesia and Malaysia, pursuant to Article 6.7 of the ATC, the Argentine authorities had decided not to apply the safeguard measure envisaged for imports of polyester fibre yarn from Indonesia, Korea and Malaysia, and for imports of polyester fibre from Korea (G/TMB/R/58, paragraph 46).

B. Communications by Pakistan

18. The TMB received a communication from Pakistan, under Article 8, following the Body's review in 1998 of two communications made, respectively, by Pakistan (pursuant to Article 2.17) and the United States (pursuant to Article 5) of a mutually satisfactory solution reached between those two Members with respect to matters related to transshipment charges for US category 361 (cotton bedsheets).[4] In the more recent communication, Pakistan reported that "following careful and detailed re-examination of the matter relating to the 'introduction of a limit on man-made fibre bedsheets and

[4] For the TMB's review of these two communications, see G/TMB/R/45, paragraphs 5 to 52.

pillowcases (category 666-S and –P)' in light of the Body's comments and considerations, [the] Government of Pakistan agrees that the subject restrictions did not conform to the provisions of the ATC. Consequently it requested consultations with the Government of the United States. Regrettably, during consultations held between [the] two governments, it had not been possible to arrive at a mutually agreed solution conforming to the provisions of the ATC." In view of that, Pakistan requested the TMB to "consider the matter pursuant to Article 8 (in particular to paragraph 5 thereof) and recommend that the United States withdraw the limits on Pakistan's exports of category 666-S and –P". At the very beginning of the consideration of this matter by the Body, the representative of the United States requested that the consideration by the TMB be suspended to allow further consultations between the two Members. Pakistan agreed to this request and the TMB, therefore, suspended its consideration. The representatives of both Pakistan and the United States, subsequently, informed the Body that the renewed consultations had been productive and requested the TMB to postpone its further consideration of this matter, since they anticipated that this would allow them to finalize a mutually agreed solution. They also indicated that they would report back to the TMB in due course on the outcome of their consultations. The TMB agreed to this request (G/TMB/R/65, paragraphs 4 to 7).

19. Subsequently, the TMB received and took note of a further communication from Pakistan in which Pakistan informed the Body that it had held bilateral consultations with the United States and stated that until such time as the results of these resumed bilateral consultations were notified to the TMB, "the review of the matter may be postponed". The TMB agreed, as suggested by Pakistan, to postpone its review of the matter until such time as the notification referred to in the communication of Pakistan is received (G/TMB/R/66, paragraph 6).

VI. OTHER MATTERS EXAMINED BY THE TMB

United States/Turkey: Introduction of a new restriction

20. At previous meetings of the TMB in 1999 (see G/L/318, paragraph 15), the Body had sought clarification from both Turkey and the United States as to whether or not a new restriction applied on Turkey's exports of certain products by the United States, part of a broader understanding reached between the two Members, was being applied pursuant to the ATC and, if this was the case, under which provision of the ATC this restriction had been introduced. Following interim replies received from the United States, Turkey and the United States stated in a joint communication, *inter alia*, that "this measure [affecting Turkey's exports of products of US category 352/652], which was part of a broader agreement contributing to the objective of further liberalizing trade, was mutually agreed between our [two] governments, was consistent with our rights under the ATC, and was taken pursuant to a provision of the ATC which does not require notification to the TMB". The TMB decided to seek further information from Turkey and the United States on the measure itself and on the particular provisions of the ATC under which the measure had been agreed. It also decided, pursuant to Article 8.1, to examine the measure in question. Since, as of mid-December 1999, no further information had been received from Turkey and/or from the United States, and there was no indication that a further communication from the two Members would be forthcoming, the TMB examined the measure in question, pursuant to Article 8.1, on the basis of the limited information available to it. In view of the fact that no information had been provided as to the particular provision of the ATC under which the measure had been agreed, the Body examined briefly all the provisions of the ATC with a view to identifying the provision under which such a measure could have been agreed without it requiring notification to the TMB. In its concluding remarks (which are noted in the report of the respective meeting), the TMB regretted that, despite its repeated requests and given that almost seven months had lapsed since it had first requested information on the measure, the parties had not provided the information the Body had sought from them on the measure itself, or on the particular provision of the ATC under which it had been agreed. It recalled in this regard that full cooperation from the Members was indispensable in facilitating the Body's task of examining, in accordance with Article 8.1, the measures taken under the ATC and their conformity therewith and, that failure by

Members to provide information hampered the TMB's ability to discharge its functions in accordance with the requirements of the ATC. In concluding its examination of the measure, the TMB recalled that Article 2.4 of the ATC states that "[n]o new restrictions in terms of products or Members shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions". After having considered the new measure against the different provisions of the ATC, on the basis of the information available to it, the TMB concluded that the measure agreed upon by Turkey and the United States, affecting imports by the United States of category 352/652 products, had not been demonstrated to be in conformity with the provisions of the ATC (G/TMB/R/60, paragraphs 26 to 33).

_____