ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

Notification under Article 11, paragraphs 4 and 5

Reference by Brazil with respect to restraints introduced by the United States

Note by the Chairman

Attached is a notification received under Article 11:4 and 11:5 from Brazil in which it has referred the restraints introduced by the United States on Categories 341 and 314/320pt under their bilateral agreement.

Mr. President,

This is to request that the Textiles Surveillance Body, pursuant to Article 11:4 and 11:5 of the Arrangement regarding International Trade in Textiles ("The Arrangement"), review, consider and make recommendations to the United States of America and the Federative Republic of Brazil regarding United States actions on Category 341 and Category 314/320 part.

2. As you are aware, a bilateral consultation took place in Washington, D.C. on 29 May 1986 concerning a call on Category 341, made on 28 February 1986, under paragraph 8 of the Agreement relating to Trade in Cotton, Wool and Man-Made Fibre Textiles and Textile Products between the Governments of Brazil and the United States of America, dated 7 August 1985. The consultation did not, as expressed by both delegations, allow for a mutually satisfactory solution to be reached, the Government of Brazil having maintained that inasmuch as the United States was unable to demonstrate the alleged threat of market disruption, the corresponding call should be withdrawn. In turn, the United States side indicated that, in view of the impossibility of an agreed solution on the matter, a unilateral quota on Brazil's exports would be imposed as of the date of expiration of the ninety-day period for consultations, i.e., 29 May 1986.

His Excellency
Mr. Marcello Raffaelli
Ambassador, President of the Textiles Surveillance Body
General Agreement on Tariffs and Trade
Geneva
Brazilian Delegation/№248 /1986/2.

3. This indication prompted the Government of Brazil to take a preliminary decision to bring the matter before the Textiles Surveillance Body for review. The intention to request such review was informally notified to a representative of the United States Government whose response was that the request would not be necessary since, contrary to what had been announced at the end of the consultation in Washington, no restraint had been placed in Category 341. Brazil, therefore, abandoned its intention and on 3 July 1986, in order to dismiss any misunderstandings, the Brazilian Embassy to the United States, upon instructions from the Government, addressed to the Department of State a diplomatic note, the contents of which were transcribed in a letter sent to you on 14 July 1986. In reply to the note, the United States formally indicated that, in its view, it was authorized to reserve its rights to establish a specific limit for Category 341 pursuant to paragraph 8(d) of the United States-Brazil Agreement. Subsequently, on 29 July 1986, five months after the call had been made, the United States unilaterally established a specific limit on Category 341 retroactive to 29 May 1986.

4. The United States interpretation as to the provision of paragraph 8(d) of the bilateral agreement resulted in creating a situation of uncertainty with respect to exports from Brazil, and has been detrimental to the orderly development of trade of products covered by this Category, thus running counter to the spirit of Article 1:2 of the Arrangement. Furthermore, Brazil maintains that the United States interpretation of the consultation provision could lead to situations where the United States defers establishing a quota until Brazil's exports approach the formula level; such action could even result in an embargo of Brazilian products. Similar situations are tantamount to the establishment of a de facto quota, and could nullify
Brazil's rights to TSB review pursuant to Article 11 of the MFA and paragraphs 20, 21 and 22 of the 1986 Protocol of Extension.

5. The Government of Brazil therefore requests the Textiles Surveillance Body to review the United States action (a) in terms of its procedures, (b) in terms of the question of market disruption, and (c) in terms of the balance of rights and obligations of the bilateral agreement, in particular paragraph 8(d) therein, and to recommend the withdrawal of the unilateral restraint placed by the U.S. In this process, particular attention should be given to the U.S. position that it is authorized to establish a quota retroactive to the end of the ninety-day consultation period at any time during the nine-month period subsequent to the consultation period. In the case of Category 341, the United States was able to avoid a TSB review of its action during the month immediately preceding the final negotiation of the MFA extension, only to impose a retroactive quota at the end of the MFA negotiations.

6. With regard to Category 314/320 part, it should be recalled that, as in the case of Category 341, the bilateral consultation held in Washington, D.C. on 29 and 30 July 1986, as per request of the United States Government, was concluded without a mutually satisfactory agreement, the Brazilian delegation having suggested at the occasion that the call should be withdrawn because, for a number of reasons, it had not been justified. Again the United States resorted to unilateral action establishing a specific limit on Category 314/320 part, as from 28 August 1986.

7. During the course of the consultations both on Category 341 and Category 341/320 part, the Brazilian delegation noted that the United States had not provided sufficient relevant information necessary for a determination relating to market disruption, as required under paragraph 8(d) of the bilateral agreement and Article 4 and Annex A of the Arrangement. As the United
States did not provide additional information relevant to the question of market disruption during the consultations, the Brazilian Delegation concluded that there was no real risk of market disruption due to imports from Brazil.

8. In conclusion, Brazil considers the United States actions to be inconsistent with the United States-Brazil Agreement, particularly paragraph 8; the Arrangement, particularly Articles 1, 4 and Annex A; and the 1986 Protocol of Extension, particularly paragraphs 2, 6 and 7.

9. At the time the matter is considered by the Textiles Surveillance Body, the Brazilian representative will submit a detailed explanation of his Government's position.

Please accept, Mr. President, the assurances of my highest consideration.

(JOSÉ MARCUS VINICIUS DE SOUSA)
Minister-Counsellor
Chargé d'Affaires a.i.