ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

Notification under Article 11, paragraphs 4 and 5

Reference by Brazil on measures taken by the EEC

Note by the Chairman

Attached is a notification received from Brazil in which it has referred the question of the interpretation and application of Article 11(4) of its bilateral agreement with the EEC in the light of Article 8 of the MFA and paragraph 22 of the 1986 Protocol of Extension.

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1 The provisions of the bilateral agreement between the parties is contained in COM.TEX/SB/917.

* English only/Anglais seulement/Inglés solamente
Mr. Chairman,

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 and in accordance with paragraph 22 of the Protocol of Extension of 1986, review, consider and make recommendations to the European Economic Community and the Federative Republic of Brazil regarding the EC's decision to deduct from the Community quantitative limit established under the EC-Brazil agreement for the year 1986 a quantity of 750 tons of the quota share allocated to the Federal Republic of Germany. In particular, Brazil requests the TSB to address the question of interpretation of Article 11(4) of the bilateral agreement in light of the provisions of Article 8 of the Arrangement, as the Community's decision to introduce an adjustment of quantitative limits appears to derive from its alleged discretionary right to do so simply on the basis of the determination of the true country of origin.

2. As you may be aware, bilateral consultations were held in Brussels between delegations of the Government of Brazil and of the Commission of the European Communities on October 27 to 29 on cases of apparent circumvention of...
Category 01 textile products.

3. During these consultations the Brazilian side presented undisputable evidence which established, beyond all reasonable doubt, that the Brazilian authorities and exporters had not had any participation in the four cases of circumvention. This fact was not contested by the Commission. It was also established that a third party detained the sole responsibility for the operations in question.

4. Brazil maintained that no action or omission on its part had caused, or led to cause, injury to the EC's interests. In such a circumstance, it should be recognized that no circumvention had occurred, to the extent that by that term it is understood an operation devised and carried out by the country of true origin with the purpose of by-passing the controls set out by the bilateral agreement. It followed logically that the consultations had not reached the stage at which a "mutually satisfactory solution", as foreseen in Article 11 of that agreement, would be called for.

5. Brazil expressed the opinion that the bilateral agreement could not be seen independently from the letter and spirit of the multilateral framework of the MFA and its Protocol of Extension. In such a light, the so-called "appropriate administrative measures" become legitimate only when, besides the country of true origin being identified, the circumstances of circumvention fully justify sanction, as stems from both the 1981 and the 1986 Protocols of Extension of the MFA. It might be recalled that during the negotiations of the Protocol of Extension of 1981 the delegation of the EC had attempted to exclude from the text of what later became paragraph 14 any reference to the element of culpability which should be contained in a case of circumvention before "appropriate administrative measures" could be taken. That
paragraph which, mutatis mutandis, was transformed into paragraph 16 of the new Protocol clearly indicates that the circumstances of circumvention ought to be taken into account in the application of a unilateral measure. It was meant by this - and upon such understanding Brazil accepted the circumvention clause of the bilateral agreement - that adjustment of charges to existing quotas to reflect the country of true origin can only be effected when there was evidence that such country was actually responsible for the circumvention; even then, unilateral adjustment of quotas, a concept rejected by the signatories of the MFA, is ruled out, and in case of disagreement the matter should be brought before the TSB.

6. All relevant elements of the investigation having been determined, the Brazilian Government considered that the bilateral consultations had reached their objectives and been completed and closed, Brazilian rights under the bilateral agreement, the MFA and its Protocol of Extension being fully reserved.

7. In order that the Brazilian position be placed on record, the Mission to the EC was instructed to send to the Directorate-General of the Commission a diplomatic note to that effect. In reply to the note, the Community stated that (a) "the legal basis for the request for an equivalent adjustment of the corresponding quantitative limits is Article 11 and Article 16 of the bilateral agreement as well as the concept of origin agreed between Brazil and the Community in Article 2 of the agreement"; (b) that "these Articles are in no way linked to any concept of culpability"; and (c) that "the provisions of Article 11 are intended to guarantee the effectiveness of the agreed limits and to provide compensation for circumvention and cannot be considered as being of a
8. Subsequently, as per note received from the Directorate-General on the 4th of December 1986 the Brazilian Mission to the EC was informed of the decision to "apply the provisions of Article 11(4) of the bilateral agreement, given the failure of the consultations to provide a satisfactory solution".

9. In conclusion, Brazil considers the EC's decision to be contrary to Article 8 of the Arrangement as well as to paragraph 22 of the Protocol of Extension of 1986. Therefore it requests the Textiles Surveillance Body to recommend the withdrawal of the unilateral action taken by the European Communities. Particular attention should be given, in reviewing the case, to the EC's position that it is entitled to take such unilateral action under Article 11(4) of the bilateral agreement in view of the provisions contained in Article 8 of the MFA and in paragraph 22 of the Protocol of Extension.

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

(PAULO NOGUEIRA BATISTA)
Ambassador
Permanent Representative of Brazil