ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

Matter referred under Article 11:5

Hong Kong/United States

Note by the Chairman

Attached is a communication received under Article 11:5 from Hong Kong, referring the question of the categorization of certain textile products under its agreement with the United States.

*English only/Anglais seulement/Inglés solamente
Geneva, 25 March 1992

H.E. Ambassador Mr. Marcelo Raffaelli  
Chairman  
Textiles Surveillance Body  
GATT  
Rue de Lausanne 154  
1211 GENEVA 21

Dear Ambassador,

I have the honour to refer to Article 11.5 of the Arrangement Regarding International Trade in Textiles (the MFA), as extended by the Protocol of 31 July 1986 (including the Protocol Maintaining in Force the MFA done at Geneva on 31 July 1991), and paragraph 10(a) of the Textiles Agreement between the Governments of Hong Kong and the United States of America dated 9 October 1991 (the Agreement), and actions taken by the Government of the United States of America concerning the categorisation of certain knit tights exported from Hong Kong to the United States under the Agreement. I have been instructed by my Government to request the Textiles Surveillance Body urgently to consider this matter and to make any recommendations which it may deem appropriate.

The point at issue is the categorisation of certain knit tights exported from Hong Kong to the United States under the Agreement. Hong Kong categorises such tights in categories 359 (cotton tights) and 659 (mmf tights), as appropriate. These categories are export authorisation categories, i.e. they are not subject to specific limit restraints. Hong Kong's practice is consistent with the US guideline on tights dated 23 November 1988.
On 16 September 1991 the Government of the United States published a Federal Register Notice on "Implementation of a New Customs Guideline Concerning Tights Imported into the United States". The new guideline amended the 1988 guideline. The Federal Register Notice also announced that the new guideline would be implemented on 1 January 1992. The Government of the United States did not consult the Government of Hong Kong prior to the publication of the new Customs guideline.

The effect of the new guideline is to recategorise cut and sewn tights as trousers, i.e. in categories 348 (cotton trousers) and 648 (mmf trousers) as appropriate. Trousers categories are subject to specific limit restraints under the Agreement. They are fully utilised and are therefore unable to accommodate exports of knit tights. The new US guideline was implemented on 1 January 1992. It has effectively stopped exports from Hong Kong of cut and sewn tights in categories 359 and 659.

The Government of Hong Kong therefore considers that the effect of the new guideline has upset the balance of rights and obligations between Hong Kong and the United States under the Agreement; affected the ability of Hong Kong to benefit fully from the Agreement; and disrupted trade in cut and sewn tights.

At the request of the Government of Hong Kong, three rounds of bilateral consultations under paragraph 10 of the Agreement were held in Washington D.C. on 25-26 November 1991, 13-14 February 1992 and 6 and 9 March 1992. No agreement was reached.

During these consultations the Government of the United States offered quota adjustment for 1992 plus a review before the end of 1992. The Government of the United States explained that in their view cut and sewn tights should have been classified as trousers. Their offer would permit traders to adjust to the "proper" classification requirement for such garments and was therefore a reasonable solution.
The Government of Hong Kong explained its view that export authorisation products had been made subject to specific limit restraints by the expedience of recategorisation rather than by using the "call" mechanism provided in the Agreement. The Hong Kong Government made clear that it was nevertheless prepared to negotiate a solution to the problem, provided that it included quota compensation in accordance with the spirit of the call mechanism in the Agreement. During the second and third round of consultations the Hong Kong Government made several proposals to address its concerns. Unfortunately the Government of the United States did not move from its proposal of quota adjustment for 1992 plus a review.

In the absence of a satisfactory solution to this matter, the Government of Hong Kong requests the Textiles Surveillance Body under Article 11.5 of the MFA to conduct a thorough and prompt consideration of the matter, and to make such recommendations as it deems appropriate.

To assist the Textiles Surveillance Body in its consideration, the Government of Hong Kong will send representatives to appear before the Body to elaborate on Hong Kong's position.

I am sending a copy of this letter to the Office of the United States Trade Representative in Geneva.

Accept, Sir, the assurances of my highest consideration.

(Joseph W.P. Wong)
Permanent Representative of Hong Kong to GATT