

GENERAL AGREEMENT ON

CONFIDENTIAL

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29 August 1990

TARIFFS AND TRADE

Textiles Surveillance Body

ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

Notification under Article 11:4, 11:5 and
paragraph 18 of the 1986 Protocol of Extension

Malaysia/EEC

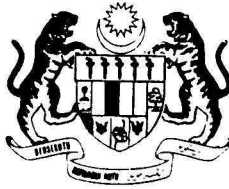
Note by the Chairman

Attached is a notification from Malaysia, received under Article 11, paragraphs 4 and 5, as well as paragraph 18 of the 1986 Protocol, referring problems relating to recategorization of certain products in its agreement with the EEC.

* English only/Anglais seulement/Inglés solamente.

PERUTUSAN TETAP MALAYSIA
KE PEJABAT BANGSA-BANGSA BERSATU
DAN BADAN-BADAN ANTARABANGSA
DI GENEVA

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Our Ref: SR(375)100/27/15-33-2

Date: August 24th, 1989

Your Ref:

H.E. Ambassador Marcelo Raffaelli
Chairman
Textiles Surveillance Body
G A T T
154 Rue de Lausanne
1211 Geneva

Dear Ambassador Raffaelli,

Malaysia's Notification to TSB on unresolved
difficulties between Malaysia and the EEC

I have the honour to refer to the Arrangement regarding International Trade in Textiles (MFA). Pursuant to Article 11 paragraphs (4) & (5), of the said Arrangement, and paragraph 18 of the 1986 Protocol extending the Arrangement, Malaysia wishes to request the intervention of the Textiles Surveillance Body (TSB) on the current unresolved difficulties between Malaysia and the European Economic Community (EEC), arising from the unilateral recategorization by EEC of ensemble items under categories 16, 29, 74 & 75 of the bilateral agreement between the EEC and Malaysia on trade in textile products.

2. Details of the said unresolved difficulties between Malaysia and EEC are contained in the attached notification by Malaysia to the TSB. I would appreciate if this matter could be tabled for consideration by the members of the TSB at the next meeting of the TSB scheduled for 13 and 14 September, 1990.

3. Malaysia wishes to reaffirm its commitment as a signatory to the MFA, and maintain its utmost confidence in the competence of the TSB.

Thank you.



(M. SUPPERAMANIAM)
Minister [Economic Affairs]

**MALAYSIA'S NOTIFICATION TO THE
TEXTILES SURVEILLANCE BODY (TSB) ON UNRESOLVED
DIFFICULTIES BETWEEN MALAYSIA AND THE EEC
AS A RESULT OF EEC'S UNILATERAL RECATEGORYISATION OF
ENSEMBLE ITEMS UNDER CATEGORIES 16, 29, 74 & 75**

I. INTRODUCTION

Pursuant to Article 11 paragraphs (4) & (5) of the Arrangement regarding International Trade in Textiles (MFA), and paragraph 18 of the 1986 Protocol extending the Arrangement, Malaysia wishes to request the intervention of the TSB on the current unresolved difficulties between Malaysia and the European Economic Community (EEC) arising from the unilateral recategorisation by EEC of ensemble items under categories 16, 29, 74 & 75 of the Agreement between The European Economic Community and Malaysia on trade in textile products.

II. ISSUES

2. The current bilateral agreement between EEC and Malaysia was initialled on 28 June 1986 and is effective from 1 January 1987. EEC has implemented the Harmonised System on January 1st, 1988. It has recategorised the ensemble suit items previously under categories 16, 29, 74 & 75 into separate new categories in the following manner according to its note verbale 00800 of 22 January 1988 :-

Previous designation (category no.)	Revised designation (category no.)
Cat. 16	Cat. 21 or 8 (top pants) and Cat. 6
Cat. 29	Cat. 21 and Cat. 6
Cat. 74	Cat. 4 or 5 or 7 (top pants) and Cat. 27 (Skirt) or 28 (pants)
Cat. 75	Cat. 4 or 5 or 7 and Cat. 27 or 28

3. In specific relation to the Malaysia-EEC bilateral textiles Agreement, Categories 16, 29, 74 & 75 are free from quota restraint. However categories 4, 5, 6 & 8 are under quota restraint, the levels of which are set out in Annex II of the Agreement. Therefore, the net effect of this recategorisation is a change from a non quota treatment to one of restraint, for items that were not under restraint under the bilateral agreement.

4. In our view, the EEC has unilaterally interpreted the Harmonised System (HS) against the grain of more internationally accepted opinion and rationale. The EEC is applying the legal definition of "ensemble" differently as communicated to us in its note verbale 008248 of 24 April 1990. In the October 1989 meeting of the nomenclature Committee of Customs Co-operation Council (CCC), which has world-wide responsibility for the HS and the HS Explanatory Notes, all participating states, with the exception of the EC - Commission - unanimously advocated that both components of an ensemble can consist of several fabrics and several colours, only these two elements have to correspond in as much as lower and upper garments are concerned - even if the order of magnitude is different. The EEC's unilateral interpretation of the definition of "ensembles" is also not acceptable to Malaysia. Further details on this are set out in the Annex.

5. Malaysia's exports of textile items under categories 16, 29, 74 and 75, continue to face problems of entry into the member states of the EEC, as a result of the EEC's unilateral interpretation of ensemble items and therefore some items under categories 16, 29, 74 and 75 have been reclassified under various restrained categories, namely categories 4, 5, 6 and 8.

6. Formal and informal bilateral consultations to resolve the issue, initiated by Malaysia, have been undertaken since early 1988. They have however proved to be inconclusive.

III. DETRIMENT TO MALAYSIA'S INTEREST

7. The recategorisation as interpreted by the EEC has been detrimental to Malaysia's interests and it has experienced the following adverse consequences :-

- (i) an erosion of access rights;
- (ii) curtailment of trade opportunities as the exports of certain previously non-restraints product items have now been recategorised as restraint items;
- (iii) loss of goodwill with European buyers as a result of goods being held up at European ports;
- (iv) a situation of uncertainty in the conduct of trade and fears of EEC importers to accept orders leading to an overall stifling effect on trade.

8. Malaysia is strongly of the view that the EEC's recategorisation of ensemble items under Categories 16, 29, 74 & 75 resulting from their implementation of the Harmonised System, represents a clear unilateral modification of the Malaysia - EEC Bilateral Textiles Agreement. Under the guise of the Harmonised System the EEC has unilaterally modified the terms of the

Malaysia - EEC bilateral agreement. The absolute neutrality of the Harmonised System, translated into the system of categorisation under the bilateral agreement therefore, is seriously in question.

9. At the time when the Agreement was negotiated in 1986, the EEC had neither notified nor alerted Malaysia of the impending changes to categories 16, 29, 74 & 75 with the advent of HS in 1988. Indeed the table in Bilateral Agreement entitled "Technical Modification to Annex I to the Agreement to be communicated to exporting countries" did not spell out any intended changes to Categories 16, 29, 74 & 75.

10. It shall be noted that Article 18(5) of the Malaysia - EEC Bilateral Agreement specifically states that the "the Annexes, Protocols, Agreed Minutes, the Joint Declaration and the Memorandum of Understanding to this Agreement shall form an integral part thereof.

11. The Bilateral Agreement provides in Protocol A, Title I, Article 1(4) that :-

" Where a Community decision on classification resulting in a change of classification practice or a change of categorisation of any product subject to the Agreement affects a category subject to restraint, the two parties agree to enter into consultations in accordance with the procedures described in Article 16(1) of the Agreement with a view to honouring the obligation under the second sub-paragraph of Article 10(3) of the Agreement. "

Second paragraph of Article 10(3) of the Agreement stipulates that :-

" Any amendment to the tariff and statistical nomenclatures in force in the Community or any decision which results in a modification of the classification of products covered by this Agreement shall not have the effect of reducing any quantitative limit established in Annex II. "

12. Malaysia believes that the technicalities of product recategorisation is disrupting its trade with the Community and is detrimental to its interest.

IV. CONSULTATIONS BETWEEN MALAYSIA AND THE EEC

13. Informal as well as formal consultations have been undertaken since early 1988 with a view to overcoming these difficulties but they were inconclusive. In particular, the following four rounds of consultations should be noted :-

- (i) Informal consultations, initiated at the request of Malaysia, were held in Brussels in December 1988. This was aimed at a preliminary exchange of views over the problem and to facilitate future formal consultations. The EEC requested a submission of export statistics and supporting documents to allow for the EEC to verify and to establish the historical trade pattern based on 1987 shipment. The EEC suggested that restraint levels may be 'adapted' as a means to overcome the problem. The EEC reaffirmed that the HS is intended to be neutral and in no way was meant to reduce Malaysia's access rights.

In this connection, Malaysia submitted statistics together with complete supporting export documents to Brussels in January 1989. Accordingly, after the verification exercise, the EEC responded in April 1989 confirming the amount of migrated trade.

- (ii) Malaysia through Note Verbale 3/89 dated 11 May 1989 to the EEC Commission requested that formal consultations be held to resolve the issue. Following Malaysia's request, formal consultations were held in Brussels in September 1989. However, consultations failed to reach any agreement. The EEC

stated that the solution should be by way of adapting the quotas through compensation based on migrated 1987 trade. Malaysia was of the view that principally the product items should remain free from restraint if no evidence of market disruption or threat thereof has been demonstrated.

(iii) Another informal round of discussion discussion was held in Brussels in May 1990. During the discussion the EEC indicated that while they were prepared to take a fresh look at the problem, they would be unable to discuss on the basis of principles. For reasons of equity, they have to adopt the same approach as they have with other bilateral partners. The corner-stone to the solution therefore would be that compensation be based on 1987 trade level. Notwithstanding this, the EEC was prepared to consider the following as well :-

- (a) trade level in 1988 and 1989;
- (b) full use of flexibility provisions; and
- (c) some account to be taken of potential trade loss.

(iv) A further round of formal consultations was held in Brussels in July 1990. The EEC informed that the adjustments would have to be based on the trade figures of 1987, the same procedure having been applied in all other cases of similar nature, but indicated its readiness to take some account of potential trade loss in 1988 and 1989 as well as to consider requests for exceptional flexibilities (carry over from 1989, inter-category transfers and inter-regional transfers). Malaysia, while acknowledging the positive and constructive approach of the EEC, maintained that the basic underlying principles must be strictly observed, which is, non-restraint items cannot be

redesignated as restraint items without clear justification and evidence of market disruption or threat thereof. Moreover the compensation figures offered by the EEC did not form a sufficient basis for a mutually acceptable solution.

V. CONCLUSION

14. The unilateral interpretation of 'ensembles' by EEC has upset the balance in the economic content of the bilateral agreement. Since no mutually acceptable solution has been found in the bilateral consultations, TSB may like to consider the issue of a directive to the EEC to maintain the classification and definition in respect of these products as mutually agreed upon initially by both parties, which is reflected in the current bilateral agreement.

ANNEX

DEFINITION OF ENSEMBLES

In the Customs Co-operation Council (CCC), which has world-wide responsibility for the Harmonised Commodity Code and HS Explanatory Notes, all participating countries, with the exception of the EEC Commission, have advocated a modification of the HS Explanatory Notes to Chapter 61 & 62 of the HS, as follows :-

For Woven Track Suits (prior to HS, allowed to be shipped to the EEC under Cats 16 & 29)

The CCC recognising that since woven track suits are almost without exception lined, have advocated that the existing HS Explanatory Notes for Heading 6211, incorporate the sentence " woven track suite may also be lined " thus allowing such items to be classified under Heading 6211. The CCC recognised that at the time when the HS Headings and HS Explanatory Notes of Chapters 61 & 62 were drafted (mid 1980s), woven track suits did not yet exist. The modification contemplated by the CCC was to take into account the fashion trend in track suits. The EEC is the only objecting party because with the contemplated change woven track suits will then be correctly classified under Heading 6211 or translated within the system of categorisation as Cat. 78.

2. Full account should be taken of the fact that the EC Commission's view is not fully shared by some of its member states, which have voted in favour of modification.

For ensembles

3. The Nomenclature Committee of the CCC again with the exception of the EC-Commission, unanimously advocated that both components of an ensemble can consist of several fabrics and several colours, only that these elements have to correspond in as much as lower and upper garments are concerned.

4. The EEC, on the other hand, on May 2, 1990 published the following Classification Regulation ad Chapters 61 and 62, which is binding for member states of the Community : " For the application of Explanatory Note 3(b) of Chapters 61 & 62, the components of an ensemble must be made up entirely in a single identical fabric. Sets of garments are not regarded as ensembles when their components are made up in different fabrics, even if the difference is only due to their respective colours. "