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REPORT (2003) 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 (2002) (G/L/574) on 15 October 2002, the TMB has held 11 meetings up to 22 October 2003. The detailed reports of these meetings are contained in G/TMB/R/93 to 103.[1]

3. The present report provides a summary of the matters referred to or taken up by the TMB during this period, together with the main observations and conclusions made, and the related actions taken except for the issues discussed at the last meeting of the Body (22 October 2003) which will be reflected in G/TMB/R/103. For further details, reference is made to the relevant sections of the reports of the respective TMB meetings.

4. It should be noted that pursuant to the decision taken by the General Council on 10 February 2003 regarding the updating of its 2002 Report and those of its subsidiary bodies (WT/GC/M/78), the TMB also adopted on 23 June 2003 an update of its 2002 Report (G/L/632). The time-period addressed in that update forms part, in its entirety, of the period covered by the present annual report. Therefore, this report also reproduces the matters included in the update of the TMB's 2002 Report.

I. QUANTITATIVE RESTRICTIONS MAINTAINED ON TEXTILE AND CLOTHING PRODUCTS UNDER THE PROVISIONS OF ARTICLE 2 OF THE AGREEMENT ON TEXTILES AND CLOTHING (ATC)

Notifications under Article 2.1 of the ATC: Quantitative restrictions notified following the accession of a new Member

(i) European Communities/China

5. Having sought clarification and information from the European Communities and after consideration of the respective observations made by China, the TMB took note of a notification received pursuant to Article 2.1 from the European Communities following the accession of China to the WTO. Bearing in mind that China's observations, made pursuant to Article 2.2, had been taken into account by the European Communities in the supplementary communications it had provided to the original notification, the TMB observed, *inter alia*, that the notification contained details of the restrictions in force on the day prior to the date of China's accession to the WTO, including the respective restraint levels, together with their growth rates and the related flexibility provisions. The notification also specified the restraint levels applied for 2002 and identified those restrictions which had been eliminated on the day of China's accession to the WTO as a result of the EC's

[1] G/TMB/R/103 will be issued at a later date, upon its adoption by the TMB.

implementation of the first and second stage integration programmes. With regard to the implementation of the growth-on-growth provisions provided for in Articles 2.13 and 2.14, the TMB recalled that according to the Report of the Working Party on the Accession of China to the WTO, "[t]o these base levels [i.e. applied on the day prior to China's accession], the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession". It was also recalled that the TMB had already addressed in detail the issue of implementation of these provisions with respect to China during one of its previous meetings and that it had reached certain conclusions regarding those minimum requirements which had to be implemented by the Members maintaining restrictions falling under Article 2.1. It was noted from the clarification provided by the European Communities that it had "increased the growth rate on the remaining restraint levels with China by 25 per cent and then by 27 per cent on 1 January 2002". In a subsequent communication, the European Communities further stated that its "application of the provisions of paragraph 241 of the report of the Working Party on China's accession implies that China is benefiting from the full 25 per cent increase inherent in the second stage of integration in spite of the fact that China became a Member of the WTO only at the very end of that period. This was of course followed by the 27 per cent applicable for the third stage. The Community is therefore well within the boundaries of application of the pertinent criteria 'as appropriate' stipulated in this paragraph. […]". It was also noted that China had not made any observations under Article 2.2 on the EC's implementation of the growth-on-growth provisions. The TMB observed that the implementation of these provisions by the European Communities met the minimum requirements described by the TMB in its examination of this issue.

6. The TMB noted that in its observations made under Article 2.2, China had requested that "[t]he growth rates of the European Fairs quota with the application of Article 2.14(a) and (b) of the ATC [be specified]". It was recalled in this regard that some aspects of this matter had already been dealt with by the TMB since a provision related to the European fairs' quota also formed part of the administrative arrangements that had been notified jointly by China and the European Communities pursuant to Article 2.17 and had been reviewed by the Body. Having considered the matter thoroughly and also in light of the explanations and information provided by the European Communities, the TMB noted that the quota levels for participation in European fairs applied on the day prior to the date of China's accession had been included in the EC's notification pursuant to Article 2.1. Furthermore, the European Communities itself had stated that in practice the European fairs' quota levels had remained unchanged over years. Thus, the levels applied in 2001 were also maintained for 2002 and were being proposed to be reconducted without modification in the year 2003. While noting the EC's reply, in particular the indication given for the year 2003, the TMB expected that the same levels would continue to be maintained also in 2004. Accordingly, the TMB requested that the European Communities inform it in due course, at the latest in December 2003, of the quota levels to be formally approved for participation in European fairs in the year 2004.

7. Concerning certain specified quantities within several restraint levels reserved for the European industry for a defined period in a calendar year, the TMB recalled that a detailed provision of the administrative arrangements notified by China and the European Communities was also devoted to this matter. Also, the Body had already examined this issue and reflected upon it in the context of its review of the said administrative arrangements. The report of that meeting had reproduced the explanations provided by the European Communities in response to a request for clarifications, the observations made by China as well as the EC's subsequent reply to these observations. In light of these elements, the TMB had been able to observe that "aspects related to the elements involved in the operation of this system had been clarified and, if applicable, rectified. As a result, there appeared to be no disagreement between the two Members regarding its functioning". The TMB had observed, furthermore, that the availability of such reserve levels was time-bound; consequently the quantities reserved "are either fully used up during the respective time-frame, or any unused portion can be allocated for exports to other potential EC buyers after expiration of the respective deadlines. Therefore, bearing also in mind: (i) that in all cases, at least half of a year

remained available for the purpose of filling up any unused portion of the respective 'reserve' restraint levels with exports to buyers other than those of the EC's industry; and (ii) that in six product categories affected the levels to be 'reserved' were below 7 per cent of the respective annual quota levels, while in two other categories the reserve applied up to 50 per cent of the related quota levels, it was considered unlikely that the overall impact of the operation of this system would hinder the ability of the exporting Member to fully utilize the export possibilities available under the respective annual restraint levels". (G/TMB/R/93, paragraphs 4 to 11)

(ii) Turkey/China

8. The TMB took note of a notification received pursuant to Article 2.1 from Turkey following the accession of China to the WTO. The TMB sought clarification and information from Turkey and bore in mind that China's observations, made pursuant to Article 2.2, had been fully addressed by the TMB and had been taken into account by Turkey in the supplementary communications to the original notification. The TMB noted, *inter alia*, that the respective growth rates applied by Turkey on 10 December 2001, i.e. on the day prior to the date of China's accession to the WTO had been those notified by Turkey in column F of the table contained in G/TMB/N/422/Add.5 and that there was no disagreement between the two Members on this matter. It was understood that these growth rates had been increased by 27 per cent in order to calculate the restraint levels for the year 2002. The TMB also observed that China had not taken issue with the fact that Turkey had notified the relevant quantitative restrictions under Article 2.1, bearing in mind the provisions of paragraph 241 of the Report of the Working Party on the Accession of China, as well as those of Article 2.1 of the ATC, which latter deal with "quantitative restrictions within bilateral agreements maintained under Article 4 or notified under Article 7 or 8 of the MFA in force on the day before the entry into force of the WTO Agreement". With regard to the implementation of the growth-on-growth provisions by Turkey with respect to the quantitative restrictions on imports from China, the TMB observed that it was in line with the methodology implied in the observations of China and exceeded the minimum requirements described by the TMB in its examination of this issue (G/TMB/R/96, paragraphs 5 to 11).

(iii) United States/China

9. The TMB reverted to its examination of a notification received pursuant to Article 2.1 from the United States following the accession of China to the WTO. With regard to the US's implementation of the growth-on growth provisions, it was recalled, *inter alia*, that the United States had prorated the 25 per cent increase foreseen in Article 2.14(a) for the period (altogether 21 days) during which China had been a Member in the second-stage integration process under the ATC. The TMB had already reached the conclusion in July 2002 that it had not been justified under the relevant provisions of China's accession instruments and the ATC to prorate the 25 per cent increase for the short period of China's actual membership during Stage 2. Therefore, the TMB had invited the United States at its meeting in July 2002 to reconsider its position and to implement the necessary adjustments to the respective methodology applied. At its meeting in November 2002, the TMB observed that no follow-up information had been provided as yet from the United States in response to this invitation. The TMB, therefore, decided to reiterate its request to the United States to provide information on this matter as soon as possible. At its meeting in December 2002, having received an additional communication from the United States in response to the Body's invitation and subsequent request, the TMB noted with concern that it had taken almost three months before the relevant follow-up information was provided by the United States. It was also observed that the United States had not provided specific arguments as to why its reasoning on the matter remained unchanged and that, therefore, it had not found it appropriate to make any adjustments to its methodology applied. In particular, in view of the fact that the communication by the United States had been received just prior to the start of the meeting, the TMB decided to revert to this matter at its subsequent meeting. At that meeting the TMB observing, once again, the absence of new or additional arguments by the United States, reiterated its conclusion that it had not been justified under the relevant provisions of

the accession instruments and the ATC to prorate the 25 per cent increase applicable to Stage 2 for the short period of China's actual membership during that stage. It was recalled in this regard that this conclusion had been reached by the TMB after careful consideration of the relevant provision of the Report of the Working Party on the Accession of China and of the language of Article 2.14(a) of the ATC and that it was further supported by the fact that no WTO Member, not even the United States, had ever in the past used prorated increase in the respective growth rates in relation to any other Member. Therefore, the TMB continued to be of the view that, with regard to the implementation of the growth-on-growth provisions provided for in Articles 2.13 and 2.14 with respect to China, the minimum requirements that had to be implemented, *inter alia*, by the United States were, that as from 1 January 2002, the base levels in force on 10 December 2001 had to be increased by the respective growth rates applied for the year 2001 (prior to China's accession), increased by the full 25 per cent applicable to Stage 2, and further increased by the 27 per cent applicable to Stage 3. The TMB also recalled that in two of its notifications made pursuant to Article 2.2, China had made observations with respect to the implementation of the growth-on-growth provisions by the United States. These observations had also been addressed by the TMB during its discussion of the implementation of the growth-on-growth provisions, as reflected in G/TMB/R/90. The TMB noted that according to Article 2.2, the Body, inter alia, "may make recommendations, as appropriate, to the Members concerned". Noting that both China and the United States had had ample opportunities to make their observations and respective arguments known and also that the TMB's conclusion had been reached with full knowledge of the observations and arguments presented in the respective notifications of the two Members concerned, the TMB decided to recommend to the United States to implement the necessary adjustments in its respective methodology applied, with a view to bringing it in line with the TMB's conclusion regarding the minimum requirements that had to be met.

10. The TMB further recalled that at its February 2002 meeting, in starting its review of the notification received pursuant to Article 2.1 from the United States following the accession of China to the WTO, the Body had decided to seek clarifications and additional information from the United States with respect to a number of other specific aspects of its notification, *inter alia*, also in light of the related observations made by China with reference to Article 2.2. In particular, at its September 2002 meeting, the TMB had considered in detail a number of issues involved, also on the basis of additional information received from the United States in response to the observations provided by China. The TMB had considered the following: the interaction between specific limits and group limits, the downward adjustment of quota levels for partially integrated products and the cap maintained by the United States on the combined use of carryover and carry forward. On the same occasion, the TMB had also considered and addressed the respective observations made by China. Furthermore, during its October 2002 meeting, the TMB had noted that the United States had made an administrative correction to certain group-limits notified, in order to correct an inadvertent error. In view of the above and noting that it had addressed all the relevant issues, the TMB considered that, bearing in mind the recommendation with respect to the implementation of the growth-on-growth provisions it had made to the United States, it was in a position to take note of the notification made by the United States pursuant to Article 2.1 (G/TMB/R/95, paragraphs 6 to 11).

(iv) United States/Former Yugoslav Republic of Macedonia

11. The TMB began its examination of a notification received pursuant to Article 2.1 from the United States following the accession of the Former Yugoslav Republic of Macedonia (FYROM) to the WTO. The TMB decided to seek clarifications from the United States, *inter alia*, on the extent to which the restrictions maintained had been affected by the ATC integration process and on the manner in which the growth-on-growth provisions foreseen in Article 2.14 and also referred to in the accession instruments of the FYROM, had been implemented with a view to providing the increase in the respective growth rates of the restrictions maintained. The TMB also decided to seek clarification as to how the special shift available for some of the quantitative restrictions notified was being implemented in practice.

12. In its reply, the United States stated that the limits notified were those in force on 3 April 2003, i.e. on the day before the entry into force of the WTO Agreement for the FYROM. None of these restrictions had been eliminated as a result of the integration by the United States of certain products under Stages 1, 2 or 3 of the ATC, since the relevant categories were not part of the respective integration programmes. The United States also explained how the special shift available for some of the quantitative restrictions notified was being implemented in practice. The TMB took note of these clarifications.

13. As to the implementation of the growth-on-growth provisions of the ATC to the quantitative restrictions notified, the United States explained that the "annual growth rate for 2004 quotas [would] be 2.54 per cent" and that, for the 2003 limits, the effective annual growth rate had been increased by prorating the growth rate of 2.54 per cent to reflect the number of days in 2003 that FYROM would be a Member of the WTO, "resulting in a prorated growth rate for 2003 of 2.40241096 per cent." The TMB recalled that the Report of the Working Party on the Accession of the Former Yugoslav Republic of Macedonia stated, *inter alia*, that "for the purposes of FYROM's accession to the WTO, the phrase 'day prior to the date of entry into force of the Agreement on Textiles and Clothing' shall be deemed to refer to the day prior to the date of accession of FYROM to the WTO. To this base level the increase in growth rates provided for in Article 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, in the Agreement on Textiles and Clothing from the date of FYROM's accession." In addition, the TMB recalled that it had already examined notifications made under Article 2.1 by the United States where the growth-on-growth provisions had been reported to be implemented by the United States, with respect to the quantitative restrictions notified, in a similar way (i.e. by using proration). Before proceeding further with the review of this element of the notification by the United States, the TMB decided to bring the additional information provided by the United States to the attention of the Former Yugoslav Republic of Macedonia. (G/TMB/R/100, paragraph 4 and G/TMB/R/102, paragraphs 4 and 5).

Notifications under Article 2.2 of the ATC: Observations by Members with regard to notifications made pursuant to Article 2.1 by another Member

14. The TMB considered the observations made by China, pursuant to Article 2.2, with regard to the notifications made by the European Communities[2], Turkey[3] and the United States.[4]

Notification under Article 2.17 of the ATC: Administrative arrangements deemed necessary in relation to the implementation of Article 2

15. The TMB reviewed, pursuant to Article 2.21, the notification made by Canada of administrative arrangements agreed between Canada and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), taking also into account the replies provided in response to the TMB's request for additional information from both Canada and Chinese Taipei. The TMB observed that the administrative arrangements contained detailed provisions regarding the operation by Chinese Taipei of an export control system, the implementation of the flexibility provisions notified by Canada pursuant to Article 2.1, exchange of statistics, the treatment of re-exports and consultations with respect to any matter arising from the implementation or operation of the ATC or of the administrative arrangements or any matter germane thereto. The TMB noted, *inter alia*, that most of the provisions of administrative arrangements agreed between Canada and Chinese Taipei were designed to ensure the implementation of measures notified by Canada under Article 2. The TMB sought, *inter alia*, clarifications from both Members on how, in their view, the provision of statistics relating to the export or import of products not contained in the Article 2.1 notification of

[2] See paragraphs 5 to 7 above.
[3] See paragraph 8 above.
[4] See paragraphs 9 and 10 above.

Canada's quantitative restrictions on imports from Chinese Taipei were deemed necessary in relation to the implementation of any provision of Article 2 of the ATC. Canada stated that "[p]aragraph 13 of the Administrative Arrangements, which reserves the right of both parties to seek additional statistics from the other, including statistics for non-restrained products, is common to all of Canada's administrative arrangements pertaining to apparel and textile restraints. It is intended, *inter alia*, to address issues concerning circumvention and transshipment. In this context, we note that Article 5.1 of the ATC explicitly acknowledges the importance of this issue, indicates that 'Members should establish the necessary legal provisions and/or administrative procedures to address and take action against such circumvention', and calls on all Members to cooperate fully to address these problems." Chinese Taipei stated that "[p]aragraph 13 is derived from the bilateral arrangement prior to [Chinese Taipei's] accession to the WTO. For the purpose of facilitating textiles trade between both parties, we have agreed to keep this paragraph in the Arrangement and for this reason we consider it appropriate not to modify the Arrangement in this regard". As to the TMB's question concerning the provision of the administrative arrangements which states that "Canada will, so far as possible, inform Chinese Taipei when imports into Canada of restrained textile products are subsequently re-exported from Canada", so that Chinese Taipei could credit back the quantity involved to the appropriate quantitative limits, Canada replied that "[s]uch situations occur regularly, for example when Chinese Taipei cancels an export licence for a shipment which is subsequently not exported to Canada. In this case, Chinese Taipei would inform Canada through our electronic verification system that the relevant export licence had been cancelled and then would re-credit automatically its quota so that it may re-allocate the amount to another shipment. However, no credit would be authorized in a situation where Chinese Taipei were seeking to cancel an export licence against which a shipment had already been entered into Canada. This is exceedingly rare in the case of Chinese Taipei given the aforementioned electronic verification system" (G/TMB/R/94, paragraphs 10 to 14).

Notification under Article 8.10 of the ATC: Inability of a Member to conform with a recommendation made by the TMB

16. The TMB reviewed a communication from the United States with reference to the provisions of Article 8.10, following the recommendation of the TMB, included in the report of its 96th meeting[5], that the United States implement the necessary adjustments in its methodology applied in providing the increase for Stage 2 of the integration process in the respective growth rates of the restrictions maintained on imports from China. In this communication, the United States stated, *inter alia*, the following:

> "In assessing whether WTO Members have complied with their obligations to China under the ATC, due consideration has to be given to the applicable provisions of the Report of the Working Party on the Accession of China to the WTO. [...] [T]he TMB also recognized that 'the relevant provisions of the legal instruments of China's accession, in particular the term "as appropriate" in the third sentence of paragraph 241 of the Report of the Working Party on the Accession of China, had not provided unambiguous guidance regarding some of the aspects involved'. In the view of the United States, this paragraph of the Working Party report not only makes it clear that the increase in growth rates should be applied from the date of China's accession, but the inclusion of the phrase 'as appropriate' also implies that this obligation should be implemented in a manner that corresponds to the length of time of China's actual WTO membership during the given stage of the ATC integration process. This is why the United States believes it is appropriate to apply an accelerated growth rate of 25 per cent pro-rated for the period of time when China was a Member of the WTO in Stage 2. In view of [this], the United States continues to be of the view that the methodology used is consistent with paragraph 241 of the Working Party report and that, therefore, it would not be appropriate to make any adjustment to the methodology applied."

[5] See paragraph 9 above.

On this basis, the United States considered itself unable to conform with the recommendation made by the TMB on the methodology to be applied by the United States with a view to providing the increase, for Stage 2 of the integration process, in the respective growth rates of the restrictions maintained on imports from China and requested the TMB to reconsider its own recommendation.

17. The TMB considered the reasons given by the United States for its inability to conform with the TMB's recommendation, also bearing in mind the observation made by China in a communication provided to the TMB. The TMB observed, *inter alia*, that the United States did not provide any reason or argument for its inability to conform with the TMB's recommendation that had not already been raised by it earlier or would have been ignored by the TMB during previous stages of its examination of the same matter. It was also noted that in its communication China did not raise any new argument either; it simply referred to its previous observations. The TMB recalled, *inter alia*, that it had already stated that "there is no provision in the ATC regarding the base levels and the related increase in growth-rates to be applied in cases of restrained exporters that acceded to the WTO only during the second or the third stage of the integration process. [...]. Therefore, in order to discharge its responsibilities, the TMB was also required to examine and to reach an understanding on the modalities agreed and guidance provided by Members in the respective legal instruments of accession *vis-à-vis* the implementation of the growth-on-growth provisions of the ATC." Furthermore, the TMB had already also observed that "[t]he provision inscribed in paragraph 241 of the Working Party report states that '[t]o these base levels, the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession'. [...] [T]he TMB was of the view that the notion 'as appropriate' was related to one or to both of the following two matters: (i) which of the articles enumerated should apply in the given circumstances; (ii) what should be the date of their actual implementation or application. However, nothing in this reading suggested that it would also provide an authorization not to implement in full any of the articles listed, once its application had been found to be 'appropriate' for the purpose of application of the ATC. In other words, once the United States concluded that since China had become a Member during Stage 2 of the ATC, it had been appropriate to apply the provisions of Article 2.14(a) to China; these provisions should have been implemented in full (i.e. for the entire year of China's accession) and the language did not seem to imply or allow for any further flexibility in this regard."

18. As to the reasoning included in the communication submitted by the United States under Article 8.10, the TMB expressed the view that there was no justification to give such a far-reaching reading to the relevant provisions of the Working Party report that would have entitled the restraining Members to apply the 25 per cent increase in the respective growth rates prorated to the length of time of China's actual membership during Stage 2. In examining the relevant provisions of the ATC and the Report of the Working Party on China's accession together, the TMB could not find any element or argument that would have supported the US's position. It was a clear obligation under the provisions of the Working Party report that, "[t]o [the] base levels [applied on the date prior to China's accession], the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession." Nothing in this language, including the term "as appropriate" suggested that the implementation of the obligations of Article 2.14, according to which "the level of each restriction shall be increased annually […]" (emphasis added) could be altered. Therefore, the TMB continued to be of the view that the provisions of the Working Party report did not provide an authorization not to implement in full for the year 2001 the annual increase foreseen in Article 2.14(a). In light of this, the TMB confirmed its view that for the year 2001 China had been entitled to benefit from the "full" 25 per cent increase in the respective growth rates.

19. The TMB concluded that the reasons provided by the United States did not lead it to change its recommendation adopted during its 96th meeting, continuing to be of the view that it had not been justified under the relevant provisions of the accession instruments and the ATC to prorate the 25 per

cent increase for the short period of China's actual membership during Stage 2. The TMB recommended, therefore, that the United States reconsider its position and implement forthwith the necessary adjustments in its respective methodology applied, with a view to bringing it in line with the TMB's conclusion regarding the minimum requirements that had to be met (G/TMB/R/98, paragraphs 5 to 27).

20. In a subsequent communication, the United States stated that it had given full consideration to the TMB's recommendation contained in paragraph 27 of G/TMB/R/98, and that "the US position continues to be that the methodology used by the United States is consistent with our WTO obligations, including paragraph 241 of the Working Party report [on the Accession of China to the WTO]. Consequently, the United States does not intend to amend its methodology to conform to the TMB's recommendation".

21. The TMB recalled that it had adopted the recommendation in question at its 99th meeting after thorough consideration of the reasons presented by the United States, pursuant to Article 8.10, for its inability to conform with the respective recommendation made by the TMB at its 96th meeting in January 2003. The TMB further recalled that this first recommendation had been made following its in-depth examination in July 2002 of the implementation of the growth-on-growth provisions by the Members concerned. Also in view of the fact that this matter had been examined by the TMB on several occasions and over a particularly long period of time, the TMB expressed regret that the matter remained unresolved. In taking note of the US's communication, the TMB observed that, following the recommendation it had made under Article 8.10, it was neither required nor mandated to address the substance of the communication received from the United States, and recalled that, under that Article, "[i]f, after such further recommendations, the matter remains unresolved, either Member may bring the matter before the Dispute Settlement Body and invoke paragraph 2 of Article XXIII of GATT 1994 and the relevant provisions of the Dispute Settlement Understanding." (G/TMB/R/100, paragraphs 5 to 7).

II. INTEGRATION OF PRODUCTS COVERED BY THE AGREEMENT ON TEXTILES AND CLOTHING INTO GATT 1994

Notification under Articles 2.8(a) and 2.11 of the ATC: Second stage of integration into GATT 1994 of products covered by the ATC

22. The TMB reverted to its examination of a notification received pursuant to Article 2.8(b) and 2.11 from Bolivia, also on the basis of an additional notification from Bolivia in response to the TMB's request for clarification. The TMB decided to seek clarification from Bolivia regarding certain aspects of this additional notification (G/TMB/R/97, paragraph 4).

III. NOTIFICATIONS UNDER ARTICLE 3 OF THE ATC

Notification under Articles 3.1 and 3.2(b) of the ATC: Restrictions on textile and clothing products other than those covered by the provisions of Article 2 and their progressive phase-out

23. The TMB resumed its examination and took note of a notification received pursuant to Article 3.1 from China, following its accession to the WTO, also on the basis of additional information submitted by China in response to clarifications sought by the TMB. China notified that it maintained quantitative export restrictions for silk yarn and woven fabrics of silk. In examining this matter, the TMB considered different aspects involved in or related to this notification, such as the scope of the application of Article 3 (i.e. whether it also applies to export restrictions); how the recourse to the provisions of Article 3 fits with provisions of the Report of the Working Party on the Accession of China dealing with export restrictions; the management and administration of the restrictions in question and their system of allocation, including the availability of information, or the

lack thereof, on the possible breakdown of export quotas according to destinations; as well as the examination of the phase-out programme provided by China in the sense of Article 3.2(b). The TMB recalled that in its additional notification provided in response to the TMB's queries, China had provided information regarding the management and administration of the export restrictions, including their system of allocation. Though issues had been raised regarding the possibility of receiving indications or statistical information on the possible allocation of export quotas according to destinations, it was understood that the quotas were applied on a global basis and that allocation by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), also through its provincial offices, was limited to the designation of Chinese domestic enterprises that could apply for export licences within their allocated quota limits. With regard to the elements of the additional notification of China which constitute a phase-out programme in the sense of Article 3.2(b), the TMB noted the reaffirmation by China that the two export quotas would be eliminated no later than 1 January 2005. Furthermore, the respective levels of both quotas for silk yarn and woven fabrics of silk had been increased by 10 per cent for the year 2002, compared to the levels in 2001. In addition, China indicated that, in both cases, the quota levels for 2003 and 2004 would be determined by applying respectively an increase of 10 per cent over the levels of the previous year (G/TMB/R/93, paragraphs 18 to 22).

Notification under Article 3.2(b) of the ATC: Progressive phase-out of restrictions not justified under a GATT 1994 provision

24. The TMB took note of a bilateral agreement between Brazil and Chinese Taipei, notified by Brazil together with the notification it made under Article 6.9 of a restraint measure agreed with Chinese Taipei[6], with reference to the phase-out programme of the quantitative restriction maintained by Brazil on imports from Chinese Taipei of certain man-made knitted or crocheted fabrics that had been notified by Brazil pursuant to Article 3.2(b). The original phase-out programme had been examined by the TMB at its meeting in July 2002. According to the bilateral agreement, the restraint level for the last quota year had been significantly increased and the termination of the restriction was brought forward to the end of June 2003 (instead of mid-September 2003) (G/TMB/R/97, paragraph 51).

IV. TRANSITIONAL SAFEGUARD MEASURES INTRODUCED UNDER THE ATC

Notifications under Article 6.9 of the ATC: Restraint measures agreed between Members

25. The TMB reviewed, pursuant to Article 6.9, the notification by Brazil of a restraint measure agreed with Chinese Taipei on imports from Chinese Taipei of other woven fabrics, containing 85 per cent or more by weight of textured polyester filaments, dyed, without rubber filaments (HS/NCM Code 5407.5210) and of other woven fabrics, containing 85 per cent or more by weight of non-textured polyester filaments (HS/NCM Code 5407.6100). In order to reach a conclusion as to whether the agreement was justified in accordance with the provisions of Article 6, the TMB conducted a detailed examination of the specific and relevant factual information provided by Brazil in accordance with Article 6.7, with a view to determining whether Brazil had successfully demonstrated, pursuant to the provisions of Articles 6.2 and 6.3, that the products subject to the agreed restraint were being imported into its territory in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products. As subsequent steps, the TMB considered whether Brazil had been right, pursuant to the provisions of Article 6.4, in attributing the serious damage to a sharp and substantial increase in imports from Chinese Taipei and whether the respective agreement complied with the applicable provisions of Article 6 (such as Article 6.8 regarding the level of the agreed restraint, Article 6.12 concerning the duration of the measure, Article 6.13 as regards the growth rates and flexibility provisions) and, if appropriate, whether it met

[6] See paragraph 25 below.

other requirements specified by the ATC. The TMB found that Brazil had successfully demonstrated, pursuant to the provisions of Articles 6.2 and 6.3, that the two products subject to the agreed restraint were being imported into its territory in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products and agreed with Brazil that the serious damage caused to its domestic industry could be attributed, *inter alia*, to imports from Chinese Taipei. Furthermore, the TMB found that the agreement reached complied with the applicable provisions of Article 6. On the basis of the above, the TMB determined that the agreement reached between Brazil and Chinese Taipei was justified in accordance with the provisions of Article 6 (G/TMB/R/97, paragraphs 5 to 41).

26. The TMB reviewed, pursuant to Article 6.9, the notification by Brazil of a restraint measure agreed with Korea on imports from Korea of other woven fabrics, containing 85 per cent or more by weight of textured polyester filaments, dyed, without rubber filaments (HS/NCM Code 5407.5210) and of other woven fabrics, containing 85 per cent or more by weight of non-textured polyester filaments (HS/NCM Code 5407.6100). The TMB observed that the request for consultations pursuant to Article 6.7 had been addressed by Brazil to Korea on the same date as a similar request addressed to Chinese Taipei[7], and that it covered the same two products. Moreover, the specific and relevant factual information provided to Korea together with the request for consultations pursuant to Article 6.7, concerning developments in total imports and the factors referred to in Article 6.3, on which Brazil had based the determination of the existence of serious damage, was the same as that provided to Chinese Taipei, referred to above. Therefore, the TMB considered that its examination of the information provided, as summarized in paragraph 25 above, and its finding that Brazil had successfully demonstrated, pursuant to the provisions of Articles 6.2 and 6.3, that the two products subject to the agreed restraint were being imported into its territory in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products, applied also to the case of the restraint agreed between Brazil and Korea. As subsequent steps, the TMB considered whether Brazil had been right, pursuant to the provisions of Article 6.4, in attributing the serious damage to a sharp and substantial increase in imports from Korea and whether the respective agreement complied with the applicable provisions of Article 6 (such as Article 6.8 regarding the level of the agreed restraint, Article 6.12 concerning the duration of the measure, Article 6.13 as regards the growth rates and flexibility provisions) and, if appropriate, whether it met other requirements specified by the ATC. The TMB agreed with Brazil that the serious damage caused to its domestic industry could be attributed, *inter alia*, to imports from Korea. Furthermore, the TMB found that the agreement reached complied with the applicable provisions of Article 6. On the basis of the above, the TMB determined that the agreement reached between Brazil and Korea was justified in accordance with the provisions of Article 6 (G/TMB/R/97, paragraphs 42 to 50).

V. COMMUNICATIONS RECEIVED BY THE TMB

Communication received from Canada

27. The TMB took note of a communication by Canada, for the Body's information, of the notification Canada had submitted to the Committee on Trade and Development (CTD) with respect to improvements to the Canadian preferential scheme for least-developed countries (LDCs). Canada stated that "[a]s it is indicated in the above-mentioned notification, effective 1 January 2003, Canada provides duty-free access for all products from LDCs, with the exception of over-quota tariff items for dairy, poultry and egg products. Canada also introduced new rules of origin requirements that apply to the newly covered textile and apparel products entering the Canadian market from LDCs. Finally, in relation to Article 2.15 of the Agreement on Textiles and Clothing, Canada's initiative provides for quota-free access for all products covered by the Agreement." Canada also enclosed in the communication an "Introductory Guide to the Market Access Initiative for the Least-Developed

[7] See paragraph 25 above.

Country and the Least-Developed Country Tariff" providing more details on the initiative (G/TMB/R/98, paragraph 28).

Communication received from the Chairman of the Special Session of the Committee for Trade and Development

28. The TMB considered a communication received from the Chairman of the Special Session of the Committee on Trade and Development requesting information on any discussions or other developments that had taken place in the TMB since the Body's communication of January 2002 on this matter. The TMB adopted a response to this communication which stated, *inter alia*, that the Body had not had a general discussion relating to the special and differential treatment provisions contained in the ATC during the period referred to. At the same time, the TMB drew the attention of the Committee to the Body's Report (2002), which referred, among other issues, to the implementation of the provisions of Article 2.18 of the ATC during the third stage of the integration process. The TMB's view was that the information contained therein could provide a useful background to the Special Session's discussion of the relevant proposals that had been referred to it. The TMB authorized its Chairman to transmit this response to the Chairman of the Special Session of the Committee on Trade and Development (G/TMB/R/93, paragraph 23).

Communication received from the Chairman of the Working Group on Trade and Transfer of Technology

29. The TMB also considered a communication received from the Chairman of the Working Group on Trade and Transfer of Technology, requesting information on any discussion, submissions and/or other developments relating to trade and technology transfer that had taken place in the TMB. The response adopted indicated, *inter alia*, that the ATC contains no specific provision that would require or lead the Body to monitor developments or issues related to trade and transfer of technology. Presumably for the same reasons, no submission relevant to this subject had been provided to the TMB by Members. The TMB, therefore, had not had any discussion in this regard. The TMB authorized its Chairman to transmit this response to the Chairman of the Working Group on Trade and Transfer of Technology (G/TMB/R/93, paragraph 24).

VI. OTHER MATTERS ADDRESSED BY THE TMB

WTO Members' compliance with notification requirements

30. During its 99th meeting, in April 2003, the TMB had a discussion on the Members' implementation of the notification and information requirements embodied in the ATC. The TMB recalled that, *inter alia*, Article 3.3 states that "[d]uring the duration of this Agreement, Members shall provide to the TMB, for its information, notifications submitted to any other WTO bodies with respect to any new restrictions or changes in existing restrictions on textile and clothing products, taken under any GATT 1994 provision, within 60 days of their coming into effect." The TMB stressed the importance of the Members' adherence to the notification requirements contained in the ATC. It was also observed that measures or actions, other than those falling under the provisions of Article 3.3, having a bearing on the implementation of other provisions of the ATC should also be brought to the TMB's attention, for its information (G/TMB/R/98, paragraph 29).

31. In September 2003, at its 103rd meeting, the TMB reverted to the same matter. It observed, *inter alia*, that since the report of its April 2003 meeting had been issued, no related notification or information from Members had been received. The TMB assumed, however, that agreements had been reached between certain Members or policies adopted and developed by some Members, falling under the provisions of Article 3.3 or having a bearing on the implementation of other provisions of the ATC, without being notified to any WTO body or brought to the attention of the TMB. Reference

was made in this context to certain comments and observations included by the TMB in its comprehensive report to the Council for Trade in Goods on the implementation of the Agreement on Textiles and Clothing during the second stage of the integration process.[8] The TMB, therefore, urged the Members concerned to provide to the TMB, pursuant to Article 3.3, any relevant notifications submitted to any other WTO bodies with respect to such agreements or policies and/or to bring to the TMB's attention those measures or actions having a bearing on the implementation of other provisions of the ATC, in particular on that of Article 2. (G/TMB/R/102, paragraph 6).

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[8] See G/L/459, in particular paragraphs 335 and 336.