

## **Textiles Monitoring Body**

### **REPORT OF THE NINETY-NINTH MEETING**

1. The Textiles Monitoring Body held its ninety-ninth meeting on 28 and 30 April 2003.
2. Mr. Ivan Lee (Hong Kong, China) appointed Mr. Tae-Yong Lee (Korea) to replace Mr. Gil-Sou Shin (Korea) as his first alternate. Mr. Hisashi Yoshikawa (Japan) appointed Mr. Hirohisa Soma (Japan) to replace Mr. Shingo Yamagami (Japan) as his alternate.
3. Present at this meeting were the following members and/or alternates: Messrs. Dalela/Lakhal; I. Lee; Ms. Miranda/Mr. Alvarado/Mr. Gough; Messrs. Seppey; Sorensen; Tagliani; Ms. Ünal; Mr. Yoshikawa; Ms. Zhang.
4. The TMB adopted the report of its ninety-eighth meeting (G/TMB/R/97).

#### **Notification received with reference to Article 8.10 of the Agreement on Textiles and Clothing (ATC)**

United States: Methodology applied 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

5. The TMB received a communication from the United States<sup>1</sup>, dated 28 March 2003, with reference to the provisions of Article 8.10, following the recommendation of the TMB, included in the report of its 96<sup>th</sup> meeting 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.<sup>2</sup>
6. In its communication, the United States submitted the following with respect to the recommendation made by the TMB:

"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. While appreciating the challenge facing the TMB in this regard, it has to be recalled that the 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

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<sup>1</sup> See G/TMB/N/458.

<sup>2</sup> See G/TMB/R/95, paragraph 10.

United States believes it is appropriate to apply an accelerated growth rate of 25 per cent prorated for the period of time when China was a Member of the WTO in Stage 2.

In view of the above, 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.

On this basis, the United States considers itself unable to conform with the recommendation contained in paragraph 10 of G/TMB/R/95 and requests that the TMB reconsider its recommendation."

7. The TMB recalled that Article 8.10 states, *inter alia*, that "[i]f a Member considers itself unable to conform with the recommendations of the TMB, it shall provide the TMB with the reasons therefore not later than one month after receipt of such recommendations. Following thorough consideration of the reasons given, the TMB shall issue any further recommendations it considers appropriate forthwith. [...]"

8. It was observed that the communication from the United States, dated 28 March 2003, had been received by the TMB on 31 March 2003. The TMB's report containing the recommendation made to the United States had been issued and circulated to WTO Members on 27 February 2003. It was noted that the date of the United States' communication, and even more so, the date of its actual receipt by the TMB, fell outside the time-frame of one month after the circulation of the respective recommendation to WTO Members. However, the ATC does not specify what should be considered as the date of receipt of such a recommendation. It could be admitted, in any event, that the United States perhaps had only received the report in question a few days after the date of its circulation. Therefore, without prejudice to the respective rights and obligations of the Members concerned arising from the provisions of Article 8.10, including those related to the time-frame specified therein, the TMB decided to proceed with the thorough consideration of the reasons presented by the United States in its communication. This decision was essentially motivated by the following:

- First, it had to be assumed that the United States had intended to act in good faith, bearing in mind the need to meet the deadline.
- Second, and more importantly, the matter addressed in the TMB's recommendation and in the subsequent United States' communication was one of systemic importance, having also an impact on market access opportunities. Therefore, it appeared to be in the interest of both China and the United States that the TMB fully comply with its responsibilities as defined in Article 8.10.

9. It was recalled that according to Article 8.7, "[b]efore formulating its recommendations or observations, the TMB shall invite participation of such Members as may be directly affected by the matter in question." The TMB noted that though it had the intention to act in full accordance with this requirement, even before such an invitation could have been sent on the TMB's behalf, a further communication had been received from the United States indicating, *inter alia*, the following: "[The US] government believes that it has expressed fully in [its communication made under Article 8.10] its reasons for not being able to comply with the TMB's recommendation. As a consequence, the US will not be sending a representative to the TMB meeting where this issue will be discussed." China had been informed accordingly, and it had also been made clear that irrespective of the United States' decision, should China so decide it was fully entitled to be represented during the TMB's consideration of the matter. Subsequently, China indicated that it would not send representatives to participate in the TMB's deliberations.

10. Instead, China briefly reiterated its respective views in a written communication addressed to the TMB. In this written communication, China observed that "as[it had] stated in its previous

observations concerning the way the United States applied the second-stage growth factor to China, China maintains its position that the United States is obliged to implement the full 25 per cent growth factor to China under the Working Party report on China's accession to the WTO as well as the ATC."<sup>3</sup>

11. Turning to the thorough consideration of 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 its respective communication, the TMB felt that it would be appropriate first to summarize the background of its recommendation, covering briefly all related developments.

(a) *Background*

12. China became a Member of the WTO on 11 December 2001. Following its accession, the United States provided a detailed notification on the quantitative restrictions it maintained with reference to Article 2.1 on imports of certain textile and clothing products from China. In its reply to the TMB's request for further clarification, the United States stated, *inter alia*, the following:

"Pursuant to the Working Party Report [on the Accession of China to the WTO], which requires that the provisions of the ATC regarding growth rates 'be applied, as appropriate, from the date of accession,' it was determined to be appropriate to apply an accelerated growth rate of 25 per cent pro-rated for that period of time (11 – 31 December 2001) when China was a Member of the WTO in Stage 2. Thus, adjusted quotas for Stage 2 were to be calculated using the pro-rated Stage 2 growth rate. In order to determine China's quota growth rate for the years 2002-2004, we increased the pro-rated Stage 2 growth rate used to determine China's notional 2001 quotas by 27 per cent, which is what is required for Stage 3 under the ATC."<sup>4</sup>

13. China brought to the attention of the TMB under Article 2.2 specific observations which addressed, *inter alia*, the application by the United States of the growth factor established in Article 2.14(a) for Stage 2 of the integration process.<sup>5</sup>

14. In a subsequent communication, provided in response to China's observations, the United States quoted in full the language of paragraph 241 of the Working Party report and stated the following:

"As required by the ATC and the Working Party report, we reiterate that the United States has applied the appropriate increase to China's annual quota growth rates."<sup>6</sup>

15. At its 91<sup>st</sup> meeting, the TMB held a focused discussion on the manner in which the growth-on-growth provisions provided for in Articles 2.13 and 2.14 had to be implemented by the Members maintaining restrictions under Article 2.1 on imports from China.<sup>7</sup> Four Members notified such restrictions: Canada, the European Communities, Turkey and the United States. The TMB's discussion covered all the aspects involved, including the methodology to be applied in providing the increase in the respective growth rates for Stage 2, pursuant to Article 2.14(a).<sup>8</sup> In this connection, the TMB "reached the conclusion that it had not been justified under the relevant provisions of the accession instruments [of China] and the ATC to prorate the 25 per cent increase for the short period of China's actual membership during Stage 2[...]"<sup>9</sup> In the summary conclusions of its discussion, the

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<sup>3</sup> See G/TMB/N/460.

<sup>4</sup> See G/TMB/N/63/Add.12/Suppl.1.

<sup>5</sup> See G/TMB/N/445 and G/TMB/N/445/Add.2.

<sup>6</sup> See G/TMB/N/63/Add.12/Suppl.3.

<sup>7</sup> See G/TMB/R/90, paragraphs 5 to 34.

<sup>8</sup> *Idem*, paragraphs 25 to 28.

<sup>9</sup> *Idem*, paragraph 28.

TMB considered those minimum requirements which had to be implemented by the Members concerned. In the TMB's view, these minimum requirements could be summarized as follows: "as from 1 January 2002, the base levels in force on 10 December 2001 [i.e. on the day prior to the date of China's accession] 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".<sup>10</sup> (underlining omitted) On this basis, "[s]ince the United States had reported an implementation which did not meet the minimum requirements, as defined above, the TMB decided to invite it to reconsider its respective position in light of the TMB's comments, observations and conclusion and to implement the necessary adjustments in its respective methodology applied".<sup>11</sup>

16. At its 96<sup>th</sup> meeting, the TMB reverted to this matter on the basis of an additional communication received from the United States.<sup>12</sup> In this additional communication, the United States stated that "it ha[d] carefully examined the TMB's report analysing the application of the growth-on-growth provisions of the ATC and concluded that the methodology used by the United States as reported in G/TMB/N/63/Add.12/Suppl.1 [was] in line with the obligations of the United States as provided for in the Working Party Report of the Accession of China to the WTO. The US reasoning on this matter, as expressed in G/TMB/N/63/Add.12/Suppl. 1 and 3, remains unchanged. In light of this conclusion, the US [was] of the view that it would not be appropriate to make any adjustment to the methodology applied".

17. In considering the additional communication received from the United States, referred to in paragraph 16 above, the TMB made a number of observations and issued a formal recommendation as follows:

- "The TMB observed that no specific arguments had been provided by the United States to substantiate the reasons why it had concluded that the methodology used by the United States was in line with its obligations, as provided for in the Working Party Report of the Accession of China to the WTO. Rather, the United States had merely stated that its reasoning on this matter remained unchanged and that, therefore, it was of the view that it would not be appropriate to make any adjustment to the methodology applied.
- At its [95<sup>th</sup>] meeting, the TMB had recalled that, in its in-depth examination of the implementation of the growth-on-growth provisions by the Members concerned, it had considered the relevant notifications received pursuant to Article 2.1 from the Members concerned (Canada, the European Communities, Turkey and the United States), as well as the respective observations made by China with reference to Article 2.2. In order to discharge its responsibilities in this regard, the TMB also had had to address provisions of the respective legal instruments of China's accession in addition to those of the ATC. Though the TMB had found that the relevant provisions of the legal instruments of China's accession, in particular the terms 'as appropriate' in the third sentence of paragraph 241 of the Report of the Working Party on the Accession of China, had not provided an unambiguous guidance regarding some of the aspects involved, it had been able to reach a conclusion on those minimum requirements which, in its view, had to be implemented by the Members concerned. Since the United States had reported an implementation which did not meet these minimum requirements, the TMB 'had decided to invite it to reconsider its respective position in light of the TMB's comments, observations and conclusion and to implement the necessary adjustments in its respective methodology applied'.

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<sup>10</sup> *Idem*, paragraph 32.

<sup>11</sup> *Idem*, paragraph 33.

<sup>12</sup> See G/TMB/N/63/Add.12/Suppl.5.

- It was observed that, despite the invitation to the United States to reconsider its respective position in light of the TMB's comments, observations and conclusion and to implement the necessary adjustments in its respective methodology applied, the US' implementation remained unchanged and, therefore, continued to not meet what the TMB had found to be the minimum requirements to be implemented. 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, as regards 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 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.<sup>13</sup> (emphasis added; footnotes omitted).

(b) *Consideration of the reasons given by the United States for its inability to conform with the TMB's recommendation*

18. The TMB noted that in its communication made pursuant to Article 8.10, the United States expressed the view that, "[i]n 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". The TMB fully concurred with this statement; its respective position is reflected in paragraph 17 above. Pursuant to Article 2.21, "[t]he TMB shall keep under review the implementation of [Article 2]" and specific provisions of this Article (namely Articles 2.13 and 2.14) define the minimum rates by which the growth rate for the respective restrictions had to be increased annually during the successive stages of the integration process under the ATC. Furthermore, China had provided observations under Article 2.2 that addressed, *inter alia*, the methodology applied by the United States in providing the increase for

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<sup>13</sup> See G/TMB/R/95, paragraphs 7 to 10.

Stage 2 of the integration process in the respective growth rates of the restrictions maintained on imports from China. Pursuant to Article 2.2, "[t]he TMB may make recommendations, as appropriate, to the Members concerned". Also, Article 8.1 requires the TMB "to examine all measures taken under [the ATC] and their conformity therewith".

19. Against this background, the TMB had already stated the following:

- "[...] the TMB noted that the ATC does not contain any disposition that gives guidance on how the growth-on-growth provisions should be implemented in relation to Members acceding to the WTO several years after the entering into force of the WTO Agreement. Articles 2.13 and 2.14 of the ATC, providing for specific staged increases of the annual growth rates of the respective quantitative restrictions taken over from the former MFA regime and notified pursuant to Article 2.1 of the ATC, were essentially designed to provide clear rules applicable in relation to those exporters under restraint that became Members at the time when the WTO Agreement entered into force. Therefore, the restraint levels to which the increase in growth rates shall apply, are defined in Article 2.13 as the 'level of each restriction under MFA bilateral agreements in force for the 12-month period prior to the date of entry into force of the WTO Agreement'. 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.
- In the latter cases referred to above, the relevant issues such as the definition of the base levels to which the provisions of Article 2 of the ATC should apply and the manner in which to these base levels the increase in growth rates should be implemented had been agreed between the WTO Members and the new Members concerned as part of the respective negotiations upon accession to the WTO. In most cases, these agreed terms and modalities were included in the reports of the respective accession working parties. The TMB noted that (i) these matters had been agreed during the accession negotiations for the purpose of application of the respective provisions of the ATC, including its Article 2; (ii) the language regarding the growth-on-growth provisions in the respective working party reports contained explicit references to the application of the relevant articles of the ATC (notably, Articles 2.13 and 2.14); (iii) pursuant to Article 2.21, the TMB was mandated to keep under review the implementation of Article 2. 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. Only such a common understanding could provide a basis and serve as a benchmark for the TMB, enabling it to verify if the actual implementation had been effected in compliance with the requirements established by the Members."<sup>14</sup> (footnote omitted; emphasis added).

20. Therefore, as demonstrated above, the TMB agreed with the United States that the implementation of the provisions of Article 2.14(a) *vis-à-vis* China could only be assessed by giving due consideration to the applicable provisions (i.e. paragraph 241) of the Report of the Working Party on the Accession of this Member to the WTO. In fact, the methodology to be applied could only be defined if the respective provisions of the ATC and those of the Working Party report were read in conjunction. The TMB emphasized that it had sought to reach an understanding on the modalities agreed and guidance provided by Members in the accession instruments regarding this matter. Reaching an understanding within the TMB concerning the likely intention of the Members in this

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<sup>14</sup> See G/TMB/R/90, paragraphs 7 and 8.

regard was, of course, not tantamount to providing an interpretation of the respective language, which is the exclusive authority of the Members that can be exercised through appropriate decisions of the Ministerial Conference or the General Council. It could, of course, happen that the understanding reached by the TMB did not correspond to the reading provided to the same provisions by certain Members (in the present case by the United States).

21. The TMB also noted that the United States' communication referred to the fact that the TMB had also recognized the following: "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". It was observed that the United States quoted this statement from the report of the TMB's 96<sup>th</sup> meeting<sup>15</sup> (during which the recommendation addressed to the United States had been adopted) and that the United States did not quote the entire sentence in question which continued as follows: "[the TMB, however,] had been able to reach a conclusion on those minimum requirements which, in its view, had to be implemented by the Members concerned". The TMB recalled also that during its detailed discussion held at its 91<sup>st</sup> meeting, in examining the methodology to be applied in providing the increase in the respective growth rates for Stage 2, pursuant to Article 2.14(a), which was, in fact, the matter covered by the TMB's subsequent recommendation and, consequently, by the United States' communication, the Body stated, *inter alia*, the following:

"The 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'. As indicated earlier, the TMB did not have sufficient information to reach a definitive conclusion with regard to the meaning of the notion 'as appropriate'. However, the 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. Therefore, in the view of the TMB, to 'determine to be appropriate to apply an accelerated growth rate of 25 per cent pro-rated' for the period of 21 days, as reported by the United States, did not appear to be substantiated by the relevant provisions of the Working Party report."<sup>16</sup> (emphasis added)

22. In light of the above, while it was true that the TMB could not reach a definitive conclusion on the meaning of the notion "appropriate", the Body had found it unlikely that this notion could also be related to the manner in which the provisions of Article 2.14(a) had to be implemented by the restraining Members. It was this common understanding reached by the TMB that led to the adoption of the recommendation addressed to the United States. It was important to note that the United States, on the one hand, did not disagree with the conclusion that, since China had become a Member during Stage 2 of the integration process, an increase in the respective growth rates applied prior to the date of China's accession had to be already provided for 2001 (which was the last year of the implementation of Stage 2). On the other hand, by relying on its own reading of the term "as appropriate", the United States continued to be of the view that its methodology, i.e. prorating, was in line with the provisions of the Working Party report. The explanations provided by the United States in support of this position are fully reflected in paragraphs 6, 12 and 14 above.

<sup>15</sup> See G/TMB/R/95, paragraph 8; and also paragraph 17 above.

<sup>16</sup> See G/TMB/R/90, paragraph 27.

23. The TMB had already been fully aware of the United States' arguments included in paragraphs 12 and 14 when it examined the matter, reached its conclusions and, subsequently, adopted its recommendation. Turning again to the communication by the United States received with reference to Article 8.10, it was noted that the (only) substantive argument given by the US in support of its methodology was the following: "In the view of the United States, [...] paragraph [241] 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". In examining this argument, the TMB made the following observations:

- As regards the reference to "the length of time of China's actual WTO membership" during Stage 2, the TMB did not disagree with the United States that this was an aspect to be considered. It could be argued that, in a sense, the condition defined by the United States had been satisfied, irrespective of the methodology applied for providing the increase in the respective growth rates for 2001, since China became entitled to enjoy the benefits of ATC implementation only as from 11 December 2001. An implementation that started from the date of China's membership in the WTO provided also a reasonable meaning to the term "as appropriate": once China became a Member, it was appropriate to increase the growth rates taken over from the pre-ATC regime.
- At the same time, there was no justification, in the view of the TMB, 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. As indicated earlier<sup>17</sup>, the respective provisions of the ATC and those of the Working Party report should be read in conjunction. In examining the relevant provisions of the two legal instruments together, the TMB could not find any element or argument that would have supported the United States' 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). As already emphasized by the TMB<sup>18</sup>, once the United States concluded that since China had become a Member during Stage 2 of the integration process under the ATC, it had been appropriate to apply the provisions of Article 2.14(a) to China; these provisions should have been implemented in their entirety instead of prorating the 25 per cent annual increase for the period of 21 days.
- In light of the above, 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.

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<sup>17</sup> See paragraph 20 above.

<sup>18</sup> See paragraph 21 above.



24. The TMB recalled that based on the argument examined above, the United States took the view that the methodology it used was consistent with paragraph 241 of the Working Party report and, therefore, it would not be appropriate to make any adjustment to the methodology applied. This is why the United States considered itself unable to conform with the TMB's recommendation and requested the TMB to reconsider its own recommendation.

25. It was observed that the TMB addressed in detail, in paragraphs 18 to 23 above, all the elements included in the communication of the United States. Indeed, 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.

(c) *Conclusion and recommendation*

26. Having given thorough consideration to the reasons presented by the United States for its inability to conform with the TMB's recommendation, the TMB concluded that these reasons did not lead it to change its recommendation adopted during its 96<sup>th</sup> meeting. For the reasons detailed, in particular, in paragraph 27 of G/TMB/R/90 and also in paragraph 23 above, the TMB continued 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.

27. 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.

**Communication received by the TMB**

28. The TMB took note of a communication by Canada (G/TMB/N/459), for the Body's information, of the notification Canada had submitted to the Committee on Trade and Development (CTD) on 5 February 2003<sup>19</sup> 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 Country and the Least-Developed Country Tariff" providing more details on the initiative.

**WTO Members' compliance with notification requirements**

29. 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,

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<sup>19</sup> WT/COMTD/N/15/Add.1.

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.

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