

Textiles Monitoring Body

REPORT OF THE SEVENTY-SECOND MEETING

1. The Textiles Monitoring Body held its seventy-second meeting on 11 December 2000.
2. Present at this meeting were the following members and/or alternates: Messrs Babajide; Farahat; Karapinar/Pospíšil; Kobayashi; Leung; Moroz; Nayyar; Tadpitakkul; Tagliani; Valencia.
3. The TMB adopted the report of its seventy-first meeting (G/TMB/R/70).

Communication received by the TMB

Pakistan/United States

4. The TMB reverted to the joint communication received from Pakistan and the United States in September 2000, in which the two Members "refer to the request made by the TMB to our two governments contained in G/TMB/R/45 that we re-examine issues related to the Memorandum of Understanding signed by representatives of our two governments on March 22, 1996". According to the communication, a new Memorandum of Understanding signed on 25 May 2000, attached to the communication, "reflects the results of this re-examination and constitutes a mutually satisfactory solution of the issues related to Articles 4 and 5 of the ATC contained in the MOU dated March 22, 1996".¹
5. The TMB observed that though it had expected to receive additional information from the parties as regards explanation and justification for the introduction of new restrictions on imports from Pakistan of products of category 666-S and 666-P², no such additional information had been received so far and that there was no indication as to whether such additional information would be provided in the near future.
6. The TMB decided, therefore, to put more specific questions to both parties with respect to the joint communication received and to the new Memorandum of Understanding (MOU) signed on 25 May 2000, so as to be in a position to determine, as required, the conformity or lack thereof, of the said measures with the ATC. These questions are presented below.
7. The TMB noted that the joint communication had been made with reference to a mutually satisfactory solution of the issues related to Articles 4 and 5 of the ATC contained in the MOU dated 22 March 1996. This seemed to indicate that both Members considered that the mutually satisfactory solution contained in the MOU dated 25 May 2000 and, by implication, also in that of the MOU of 22 March 1996, had been reached under the ATC. The TMB expected that both Members would provide confirmation in this regard.
8. The TMB observed that the joint communication referred to the request made by the TMB, contained in paragraph 51 of G/TMB/R/45, "that Pakistan and the United States re-examine the measures in question [i.e. the new restrictions introduced in 1996 on imports from Pakistan of

¹ See G/TMB/R/69, paragraphs 6 to 8.

² See G/TMB/R/69, paragraph 8.

products of categories 666 - P and 666 - S for a duration of almost nine years], in the light of the Body's comments and considerations. With a view to exercising proper surveillance of the implementation of its recommendation, the Body expected that the two parties would report back to it on the outcome of this re-examination, in a way that would enable the TMB to pronounce itself definitively on the justification and conformity of the actions with the relevant provisions of the ATC". The joint communication stated that "[t]he attached Memorandum of Understanding reflects the results of this re-examination and constitutes a mutually satisfactory solution of the issues related to Articles 4 and 5 of the ATC contained in the MOU dated 22 March 1996". The TMB noted that while its request for re-examination had been related to the possible justification, or lack thereof, of the introduction of new restrictions under the provisions of the ATC invoked by the parties at that time (Article 2.17 by Pakistan and Article 5 by the United States, respectively), the joint communication and the attached MOU did not seem to provide a direct reply to this core question. Therefore, it was not clear, for the TMB, in what sense and to what extent the mutually satisfactory solution reached in May 2000 was the result of the re-examination of the measures in question in the light of the Body's comments and considerations as contained in G/TMB/R/45, in particular paragraphs 29 to 42. The TMB expected clarification from the parties in this regard.

9. The TMB further observed that the MOU, dated 25 May 2000, stated that representatives of Pakistan and the United States had met on 24-25 May 2000 "to continue consultations begun on 20-22 March 1996 with regard to deductions made on 11 August 1995 to Pakistan's category 361 quota under Article 5 of the Agreement on Textiles and Clothing (ATC). Such consultations also included related issues concerning bedsheet and pillowcase categories in both cotton and man-made fibres raised under Articles 4 and 5 of the ATC. Having obtained a mutually satisfactory solution resolving these issues", the parties agreed to certain remedies in the form of amendments to the remedies obtained under the MOU dated 22 March 1996. These remedies essentially consisted of increases in the levels of the restrictions applied for the years 2000 to 2004 to imports of products of categories 666-P and 666-S, as well as provision for certain special flexibility regarding the application of these restrictions. The question arose as to the exact relationship between these new remedies and (i) the deductions made on 11 August 1995 to Pakistan's category 361 quota under Article 5 of the ATC and, in particular, (ii) the related issues concerning bedsheet and pillowcases categories in both cotton and man-made fibres raised under Articles 4 and 5 of the ATC. With respect to the latter, an explanation of what were "the related issues concerning bedsheet and pillowcase categories in both cotton and man-made fibres under Articles 4 and 5 of the ATC" would also be helpful for the TMB in order to have a better understanding regarding the facts involved in this case. The TMB, therefore, requested further elaboration from the parties on these questions.

10. Turning to the key issue of conformity, or lack thereof, of the new restrictions with the provisions of the ATC, the TMB recalled that during its seventieth meeting it had made the following observations: the joint communication "while reporting to constitute a mutually satisfactory solution between the two Members, did not contain explanation or justification for the introduction of a restriction on imports of products of category 666-S and 666-P and did not specify the particular provision of the ATC which would justify, in the view of the parties, the application of such a measure. The TMB recalled that, already in 1998, these had been the same reasons why it had not been in a position to take a definitive stand on the conformity, or lack thereof, of this measure with the ATC. Consequently, the TMB had recommended that the parties re-examine the measure in question, in light of the Body's detailed comments and considerations. In the continued absence of appropriate explanation and justification from the two Members, the TMB reiterated that unless additional information in this regard was provided, the Body was not put in a position to determine, as required, the conformity, or lack thereof, of this measure with the ATC." ³

³ See G/TMB/R/69, paragraph 8.

11. With a view to providing more precision in this regard, the TMB observed that whilst the respective communications of the mutually satisfactory solution reached between Pakistan and the United States on 22 March 1996 had been made under Article 2.17 by Pakistan and under Article 5 by the United States, the recent joint communication referred to "a mutually satisfactory solution of the issues related to Articles 4 and 5 of the ATC contained in the MOU dated 22 March 1996", making no reference to Article 2.17. It seemed, therefore, that the reference to Article 2.17 was no longer applicable, at least in so far as the mutually satisfactory solution reached on 25 May 2000 was concerned. The TMB sought confirmation by the parties in this regard.

12. Furthermore, the TMB recalled that in reviewing the communications received from both Pakistan and the United States related to the MOU of 1996, and in particular the introduction of a limit on imports from Pakistan of man-made fibre bedsheets and pillowcases (categories 666-S and 666-P), the Body had found, *inter alia*, that:

- "there appeared to be no justification for the introduction of new restrictions pursuant to Article 2.17, which was the only provision of the ATC invoked by Pakistan;
- it appeared to be more relevant to consider these measures in the context of Article 5 of the ATC, which was the provision referred to by the United States. The United States, however, had not provided further precision regarding the applicable paragraph under Article 5;
- in the absence of appropriate explanation and justification provided to it, the TMB carefully considered all possible options, arguments and counter-arguments in the context of Article 5. Though for the reasons explained [in its detailed report], the TMB had not been placed in a position to take a definitive stand at this stage on the conformity, or lack thereof, of the measures discussed with the ATC, the Body was of the view that its detailed considerations, especially as reproduced in paragraphs 29 to 42 [of G/TMB/R/45] would not only require, but also facilitate further reflection by Pakistan and the United States."⁴

The TMB noted in this respect that the only provisions of the ATC referred to in the recent joint communication, and in the MOU attached to it, were Articles 4 and 5, and that the specific provisions of those Articles which the parties considered to be relevant in the context of the introduction of new restrictions had not been identified, nor had any explanation or reasoning on the purpose for the invocation of these provisions been provided. Recalling its examination and findings as reflected in G/TMB/R/45, the TMB reiterated that such information would be of crucial importance for its further examination of the joint communication and urged the parties to provide it to the TMB.

13. In particular, if the parties considered that new restrictions could be introduced in respect of the case at hand pursuant to Article 5, the TMB expected them to specify the particular paragraph of the said Article under which such measures had been agreed upon. In so doing, they should also reflect on the detailed arguments made by the TMB in paragraphs 29 to 50 of G/TMB/R/45 and make their respective views on them known to the TMB. Furthermore, as regards Article 4, the TMB noted that this Article had not been specifically referred to by either party prior to the recent joint notification, and that no information had been provided as to whether this reference had been made in the context of the resolution of the matters concerning the US rules of origin changes with respect to bedsheets and pillowcase imports from Pakistan into the United States, or whether it had been made in the context of the introduction of new restrictions on imports of man-made fibre bedsheets and pillowcases. With respect to the latter the TMB wished to recall that it had already reflected, though

⁴ See G/TMB/R/45, paragraph 50.

in a different context, upon the possibility of introducing a new restriction under Article 4 of the ATC and reached certain conclusions in this regard.⁵

14. The TMB expressed its concern that it had not yet been put in a position to determine, as required, the conformity, or lack thereof, of the measures agreed between Pakistan and the United States with the ATC. In particular, with reference to Article 8.3 of the ATC, it noted that full cooperation from the Members concerned was indispensable in facilitating the TMB's task of examining the measures referred to it under the ATC and of determining their conformity therewith. Continued failure to provide the requested information could seriously hamper the TMB's ability to discharge its functions in accordance with the requirements of the ATC. Therefore, the Body urged both parties to provide replies to the questions posed in paragraphs 7 to 13 above without delay.

Preparation for the 2001 Comprehensive Report under Article 8.11

15. The TMB decided to request the WTO Secretariat to provide it with background statistical information with respect to trade in textiles and clothing, in the context of the Body's preparation of its comprehensive report on the implementation of the ATC during the second stage (1998-2001), pursuant to Article 8.11.

⁵ See G/TMB/R/60, paragraph 31.