

## Textiles Monitoring Body

### REPORT OF THE NINETY-SECOND MEETING

1. The Textiles Monitoring Body held its ninety-second meeting on 16 and 17 September 2002.
2. Mr. Otto Wentzel (Norway) appointed Mr. Frederic Seppey (Canada) to replace Mr. A.R. Moroz (Canada) as his alternate.
3. Present at this meeting were the following members and/or alternates: Messrs. Alvarado/Gough; Ekawat; Farahat; Karapinar; Lee; Nayyar/Ms Zhang; Messrs. Sorensen; Tagliani; Wentzel/Seppey; Yoshikawa.
4. The TMB adopted the report of its ninety-first meeting (G/TMB/R/90).

#### Notifications under Article 2.1 of the Agreement on Textiles and Clothing (ATC)

5. The TMB took note of a notification received pursuant to Article 2.1 from the United States following the accession of Chinese Taipei to the WTO (G/TMB/N/63/Add.13 and Add.13/Suppl.1). Having sought clarifications and information from the United States<sup>1</sup> and mindful of the fact that Chinese Taipei had informed the TMB that it had no comments or observations to make in the sense of Article 2.2, the TMB observed that the notification, as supplemented, contained the quantitative restrictions on imports of textile and clothing products originating in Chinese Taipei under arrangements between Chinese Taipei and the United States that were in force on the date prior to the date of accession of Chinese Taipei to the WTO. In addition to the restraint levels, the notification contained the respective growth rates and flexibility provisions in force on 31 December 2001. Also, in reply to the TMB's request, information was provided on the quantitative restrictions eliminated on 1 January 2002 as a result of the integration by the United States of certain products during Stages 1, 2 or 3 of the integration process. As regards the implementation of the growth-on-growth provisions provided for in Articles 2.13 and 2.14, the TMB, having sought clarification from the United States, noted that the United States had stated that "[t]he Working Party report on the accession of Chinese Taipei provides that the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC are to be applied from the date of accession, as appropriate<sup>2</sup>. Chinese Taipei acceded to the WTO on 1 January 2002. Accordingly, the growth rates were increased by 27 per cent."<sup>3</sup> Though the TMB had requested an explanation by the United States as to why it had decided to implement the growth-on-growth provision in this manner, no further reply was provided. The TMB observed, however, that this implementation was not questioned by Chinese Taipei and that it was in line with the conclusion reached by the TMB regarding the minimum requirements applicable to the implementation of the growth-on-growth provisions of the ATC with respect to Chinese Taipei.<sup>4</sup>

6. The TMB reverted to its examination of a notification received pursuant to Article 2.1 from the European Communities following the accession of China to the WTO, also on the basis of additional information received from the European Communities in response to clarifications sought

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<sup>1</sup> See G/TMB/R/86, paragraph 5 and G/TMB/R/88, paragraph 6.

<sup>2</sup> As already observed by the TMB, the United States had misquoted in this statement the relevant provision of the Working Party Report. (See G/TMB/R/90, paragraph 37.)

<sup>3</sup> See G/TMB/N/63/Add.13/Suppl.1.

<sup>4</sup> See G/TMB/R/90, paragraph 43.

by the TMB<sup>5</sup> (G/TMB/N/60/Add.5/Suppl.3). The TMB started to examine the additional information provided by the European Communities, mindful of the fact that the answers provided by the European Communities to previous questions put by the TMB<sup>6</sup>, in particular that related to the quotas for European Fairs, had been brought to the attention of China and that China had not as yet reacted upon it.

7. 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, also on the basis of additional information received from the United States (G/TMB/N/63/Add.12/Suppl.3) in response to the observations contained in a notification received by the TMB from China pursuant to Article 2.2 (G/TMB/N/445/Add.2).<sup>7</sup> The TMB considered the following elements: the interaction between specific limits and group limits, the downward adjustment of quota levels for partially integrated products, the cap maintained by the United States on the combined use of carryover and carry forward and the manner in which the United States had implemented the growth-on-growth provisions of the ATC in relation to China.

8. As regards the interaction between specific limits and group limits, the TMB noted that China had stated that it had "noted that the base level for Group I is less than the total base level for all the covered 78 specific limits. In particular, in view of the fact that the average annual growth rate for those specific limits is 1.66 per cent while the Group Limit has just 1 per cent annual growth rate, the Group Limit will, along with the time, cut into the full utilization of Specific Limits covered".<sup>8</sup> In a subsequent communication, China added that "[a]s China has become a WTO Member since 11 December 2001, the issue shall be examined under WTO framework, specifically the ATC".<sup>9</sup> The TMB also noted that the United States had stated that under Article 2.1, "the obligation is on the United States to notify 'quantitative restrictions within bilateral agreements [...] in force on the day before the entry into force of the WTO Agreement [...] including the restraint levels.'" The Working Party Report on China's accession provides that the phrase 'day prior to the date of entry into force of the WTO Agreement contained in Article 2.1 of the ATC should be deemed to refer to the day prior to the date of China's accession.' Accordingly, the notification for the specific limits and the Group limit for Group I [...] reflects the base levels in effect on 10 December 2001. These base levels, and the associated growth rates and flexibility provisions, reflect a negotiated balance of mutual concessions acceptable to the People's Republic of China and the United States and will henceforth be governed by the provisions of the ATC".<sup>10</sup>

9. Bearing these communications in mind, the TMB recalled that Article 2.1 requires Members to notify in details "all 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", and that paragraph 241 of the Report of the Working Party on the Accession of China to the WTO states, *inter alia*, the following: "Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and apparel products originating in China that were in force on the date prior to the date of China's accession should be notified to the Textiles Monitoring Body ('TMB') as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing ('ATC'). For such WTO Members, the phrase 'day prior to the date of entry into force of the WTO Agreement', contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of China's accession" (emphasis added). The TMB observed that the US' notification made pursuant to Article 2.1 of the ATC and to paragraph 241 of the Report of the Working Party on the Accession of China to the WTO contained the restrictions in place on imports from China on

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<sup>5</sup> See G/TMB/R/90, paragraph 51.

<sup>6</sup> See also G/TMB/R/90, paragraph 51.

<sup>7</sup> See G/TMB/R/89, paragraph 5.

<sup>8</sup> See G/TMB/N/445.

<sup>9</sup> See G/TMB/N/445/Add.1.

<sup>10</sup> See G/TMB/N/63/Add.12/Suppl.2.

10 December 2001, together with the respective restraint levels, growth rates and flexibility provisions. The TMB noted that such restrictions were composed of group and specific limits. It was observed that China did not call into question the fact that the restrictions notified and also the restraint levels and growth rates reported had been in force on the day prior to the date of China's accession. The TMB further observed that Article 2.4 of the ATC states that "[t]he restrictions notified under paragraph 1 [of Article 2] shall be deemed to constitute the totality of such restrictions applied by the respective Members on the day before the entry into force of the WTO Agreement. No new restrictions in terms of products or Members shall be introduced except under the provisions of this Agreement or relevant GATT 1994 provisions."

10. While noting the concerns expressed by China regarding the potential adverse effects on trade, the TMB could not identify any provision in the ATC which would prohibit the group and specific limits which were in force on the day before the entry into force of the WTO Agreement from remaining in force with that of the implementation of the growth-on-growth provision of the ATC, up and until the integration of the respective products the into GATT 1994. The TMB, noting that China had made its observations under Article 2.2, did not find it appropriate, in view of the considerations outlined above, to make recommendations to the Members concerned.

11. With respect to the downward adjustment of quota levels for partially integrated products, the TMB noted that China had stated that "the base levels for some Specific Limits and certain Group Limits have been substantially reduced due to partial integration. For example, the base level for Group III was reduced by 81.74 per cent. Such measures adversely affect China's export of non-integrated products covered therein".<sup>11</sup> The TMB also noted that the United States had stated that "[a]s provided for in Article 4.3, the quotas that were affected by partial integration have been reduced to reflect the more limited product coverage. As with other WTO Members, the United States applied a standard methodology for adjusting specific and group limits to reflect partially integrated products. The U.S. practice is to adjust group and specific limits affected by partial integration by reducing them by the average amount of volume of trade in the integrated product for the previous two calendar years, specifically, 1999 and 2000 in this instance".<sup>12</sup> The TMB noted, in this regard, that the level of the quantitative restrictions notified had remained unchanged until 31 December 2001, and that the downward adjustments of quotas had taken place apparently on 1 January 2002 with the implementation of the provisions of Article 2.8(b) by the United States. Therefore, China's observation was not directly related to the restraint levels taken over from the pre-ATC regime, as notified by the United States pursuant to Article 2.1, but rather a matter to be dealt with pursuant to the provisions of Article 4. The TMB noted in this regard that Article 4.3 states that "[i]f a product which constitutes only part of a restriction is notified for integration pursuant to the provisions of Article 2, Members agree that any change in the level of that restriction shall not upset the balance of rights and obligations between the Members concerned under this Agreement". Therefore, the ATC allowed for the downwards adjustment of quotas as a result of the partial integration of products, provided such adjustments did not upset the balance of rights and obligations between the Members concerned under the ATC. For such cases, Article 4.4 states that "[...] Members agree that the Member initiating such changes shall inform and, wherever possible, initiate consultations with the affected Member or Members prior to the implementation of such changes, with a view to reaching a mutually acceptable solution regarding appropriate and equitable adjustment. Members further agree that where consultation prior to implementation is not feasible, the Member initiating such changes will, at the request of the affected Member, consult, within 60 days if possible, with the Members concerned with a view to reaching a mutually satisfactory solution regarding appropriate and equitable adjustments. If a mutually satisfactory solution is not reached, any Member involved may refer the matter to the TMB for recommendations as provided in Article 8 [...]".

12. The TMB observed in this regard that China had raised this issue in a general way, by referring to "some specific limits" and "certain group limits" and that the example provided by it

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<sup>11</sup> See G/TMB/N/445.

<sup>12</sup> See G/TMB/N/63/Add.12/Suppl.2.

could not be assessed further by the TMB in view of the lack of further relevant information. The TMB had not received sufficient specific information from China, nor indications on the possible consultations between the Members concerned referred to in Article 4.4, that would have enabled it to examine, in case of lack of a mutually satisfactory solution in the consultations regarding specific cases, whether or not the balance of rights and obligations between the Members concerned under this Agreement had been upset and, if so, whether the adjustments implemented had been appropriate and equitable; nor had China referred any related specific matter to the TMB for recommendation as provided in Article 8.

13. The TMB also considered the observations made in relation to the cap maintained by the United States on the combined use of carryover and carry forward. It noted that China had stated, with regard to the implementation of Article 2.16, that "[t]he United States still maintains specific caps on the combined use of carryover and carry forward. In China's view, the original intention of the Article is that quantitative limits shall be imposed neither on the combined use of all the three of swing, carryover and carry forward, nor on the combined use of any two."<sup>13</sup> The TMB recalled that it had decided to seek further clarifications from China, in particular regarding elements which supported China's view concerning the "original intention" of this specific provision of the ATC. It was noted that no reply had been provided as yet by China to this request. It was also noted that the United States had stated that "[a]s required by Article 2.16, all the flexibility provisions that were in effect under the bilateral textile agreement will remain in effect under the ATC, and the restriction on the specific caps on the combined use of carryover and carry forward as indicated in our notification will be retained, however, there is no quantitative limit on the combined use of swing, carryover and carry forward".<sup>14</sup> The TMB recalled that Article 2.16 states that "[n]o quantitative limits shall be placed or maintained on the combined use of swing, carryover and carry forward." In the view of the TMB, a plain reading of the sentence indicated that no quantitative limit should be placed or maintained on the combined use of swing, carryover and carry forward, at the same time. However, it was not clear whether the language of Article 2.16 allowed the use of a cap on the combined use of carryover and carry forward. It was observed that arguments could be found in support of either reading. Regarding the original intention of Article 2.16, as referred to by China, no reliable indications were at the TMB's disposal regarding the drafting history of this provision of the ATC. Therefore the TMB could not express a view on this argument. The TMB considered that it could revert to this matter in the light of possible additional elements and arguments that could be provided by the Members concerned.

14. As regards the implementation of the growth-on-growth provisions of the ATC, the TMB noted that in its latest notification (G/TMB/N/63/Add.12/Suppl.3) the United States had reiterated its view that it had applied the appropriate increase to China's annual quota growth rates, in conformity with the requirements of the ATC and the Report of the Working Party on China's Accession. The TMB recalled in this regard that it had already addressed, in a detailed and focussed discussion, the manner in which the growth-on-growth provisions provided for in Articles 2.13 and 2.14 should be implemented.<sup>15</sup> On the basis of this discussion, the TMB had reached a conclusion on the minimum requirements that had to be implemented by the Members concerned.<sup>16</sup> In light of this conclusion, the TMB had already invited the United States to reconsider its position and to implement the necessary adjustments to the respective methodology applied.<sup>17</sup> However, it was noted that the United States could not have been aware of the TMB's discussion and conclusions at that point in time, since the relevant report had only been adopted at the beginning of the present meeting.<sup>18</sup>

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<sup>13</sup> See G/TMB/N/445/Add.1.

<sup>14</sup> See G/TMB/N/63/Add.12/Suppl.1.

<sup>15</sup> See G/TMB/R/90, paragraphs 5 to 34.

<sup>16</sup> See G/TMB/R/90, paragraph 32.

<sup>17</sup> See G/TMB/R/90, paragraph 33.

<sup>18</sup> See paragraph 4.

15. The TMB reverted to its examination of a notification received pursuant to Article 2.1 from Turkey following the accession of China to the WTO, also on the basis of an additional notification provided by China (G/TMB/N/447/Add.2) which had been notified subsequent to the Body's examination of the additional notification provided by Turkey.<sup>19</sup> The TMB considered in particular the growth rates for the quantitative restrictions notified by Turkey with reference to Article 2.1. The TMB observed that, in its latest notification, Turkey had stated, *inter alia*, that "[w]ith respect to the growth rates included in the notification of Turkey (Annex I), Turkey can inform that the rates are the original growth rates which were annexed to the Turkey-China bilateral agreement and neither reflects the rates after the application of "growth-on-growth" provisions nor embodies the growth rates of 2001". The quota levels in Turkey's notification (Annex I) were 2001 quota levels but the growth rates were the original growth rates. The annex of the bilateral agreement showing the growth rates is herewith enclosed for further clarification"<sup>20</sup> (emphasis added). The TMB also observed that the growth rates in this latter annex were those which referred to 1994 and 1995 and that they had been used for establishing the respective restraint levels for the year 1996. The TMB further observed that China had stated in this regard, that "[w]ith respect to Turkey's additional notification (G/TMB/N/422/Add.2), China would like to draw the attention of the TMB to China's notification of 19 April 2002 (G/TMB/N/447) and would like to stress again that because Turkey failed to notify the appropriate growth rates and to use it as bases for applying the growth-on-growth factors, the quota levels enjoyed by China for the year 2002 are lower than they should have been calculated based on the growth rates applied in 2001."<sup>21</sup>

16. As regards the growth rates to be notified for the purpose of Article 2.1, the TMB recalled that paragraph 241 of the report of the Working Party on the Accession of China to the WTO states the following: "Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and apparel products originating in China that were in force on the date prior to the date of China's accession should be notified to the Textiles Monitoring Body ("TMB") as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing ("ATC"). For such WTO Members, the phrase 'day prior to the date of entry into force of the WTO Agreement', contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of China's accession. To 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. The Working Party took note of these commitments". The TMB also recalled that Article 2.1 states that "[a]ll 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 shall, within 60 days following such entry into force, be notified in detail, including the restraint levels, growth rates and flexibility provisions, by the Members maintaining such restrictions to the Textiles Monitoring Body provided for in Article 8" (emphasis added).

17. Therefore, it flowed from a reading of both Article 2.1 and paragraph 241 of the Working Party report that the growth rates to be notified by Turkey for the purpose of application of Article 2 following China's accession to the WTO were those in force on the day before the date of entry into force of the WTO Agreement for China, i.e. 10 December 2001. The TMB noted in this regard that, as observed by China and also confirmed by Turkey, such growth rates had not been provided by Turkey. Therefore, the TMB invited Turkey to notify them as rapidly as possible and to apply them for the purpose of application of the provisions of Article 2.

#### **Notifications under Article 2.17 of the ATC**

18. The TMB reverted to its review, pursuant to Article 2.21, of the notification made by the European Communities of administrative arrangements agreed between the European Communities

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<sup>19</sup> See G/TMB/R/90, paragraph 49.

<sup>20</sup> See G/TMB/N/422/Add.2.

<sup>21</sup> See G/TMB/N/477/Add.2.

and China (G/TMB/N/444), also on the basis of responses received from the European Communities (G/TMB/N/444/Add.3) to a further request for clarifications.<sup>22</sup> After having considered some elements included in the administrative arrangements, the TMB decided to revert to its review at a subsequent meeting.

19. The TMB reverted to its review, pursuant to Article 2.21, of the notification made by the United States of administrative arrangements agreed between the United States and China, also on the basis of information provided by the United States in response to the clarifications sought by the TMB (G/TMB/N/450/Add.1).<sup>23</sup> Mindful of the fact that it had also sought clarifications with respect to a number of specific issues from China, which had not as yet been provided, the TMB decided to revert to its review at a subsequent meeting.

#### **Notification under Article 3.2 of the ATC**

20. The TMB considered a notification made under Article 3.2(b) by Japan of the progressive phase-out programme of the quantitative restrictions maintained by Japan on imports from China of silk yarn and silk fabric (G/TMB/N/425/Add.1 and Add.2).<sup>24</sup> According to the notification, the quantitative restrictions maintained on imports from China of silk yarn and silk fabric will be increased for each of the Japanese fiscal years 2002, 2003 and 2004, by 3.8 per cent for silk yarn and 4.8 per cent for silk fabrics. In addition, the measures will be eliminated on 1 January 2005. The TMB took note of this notification.

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<sup>22</sup> See G/TMB/R/90, paragraph 52.

<sup>23</sup> See G/TMB/R/89, paragraph 15.

<sup>24</sup> See G/TMB/R/86, paragraph 9 and G/TMB/R/87, paragraph 18.