

Textiles Monitoring Body

REPORT OF THE NINETY-FOURTH MEETING

1. The Textiles Monitoring Body held its ninety-fourth meeting on 12 November 2002.
2. Present at this meeting were the following members and/or alternates: Mr. Alvarado/Ms Miranda; Messrs. Dalela; Karapinar; Lee; Seppey; Sorensen; Tagliani; Yoshikawa; Ms. Zhang/Ms Lu.
3. The TMB adopted the report of its ninety-third meeting (G/TMB/R/92).

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

4. 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 (G/TMB/N/60/Add.5 and Suppls. 1 to 4). Having sought clarifications and additional information from the European Communities¹ and after considering the observations made under Article 2.2 by China *vis-à-vis* this notification², the TMB noted the EC's statement that, pursuant to Article 2.1, it had notified the restrictions taken over from its previous bilateral agreement with China, which had their roots "within bilateral agreements maintained under Article 4 or notified under Article 7 or 8 of the MFA". The TMB observed that the notification, as supplemented and corrected, 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 implementation of the first and second stage integration programmes. It was also observed that, in addition to the EC quantitative restrictions for direct exports by China ("direct quantitative limits"), the notification also provided for additional EC quantitative levels for goods reimported under outward processing traffic ("OPT additional quantitative levels") for almost half of the product categories subject to restraints. Also indicated were the respective annual growth rates that applied to these additional quantitative levels. Furthermore, the European Communities also notified those separate quantities which had been made available for the year 2001 for a number of product categories and which were meant to be used exclusively in European fairs. It was further noted that the flexibility provisions notified for the respective regular quotas affecting these product categories were also applicable for the quantities notified for use in European fairs. Moreover, remarks attached to the listing of the "direct quantitative limits" indicated that in several product categories the restraint levels notified for 2001 included certain specified quantities which were reserved for the European industry for a defined time-period of the calendar year.

5. As regards 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

¹ See: G/TMB/R/85, paragraph 5; G/TMB/R/87, paragraph 4; G/TMB/R/90, paragraph 51; G/TMB/R/91, paragraph 6 and G/TMB/R/92, paragraph 4.

² See G/TMB/N/436 and G/TMB/R/87, paragraph 10.

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".³ 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 meetings⁴ and that it had reached certain conclusions regarding those minimum requirements which had to be implemented by the Members maintaining restrictions falling under Article 2.1.⁵ 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 benefitting 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. [...]".⁶

6. 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.⁷

7. The TMB noted that pursuant to the 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.⁸ The TMB was aware that in reply to a request for clarification, the European Communities had stated, *inter alia*, that the quota "levels [for European Fairs] are additional amounts fixed on an annual basis" and that "they constitute a separate and specific arrangement". In a subsequent communication, the European Communities had provided additional explanation by stating that "quotas which on an *ad hoc* basis are granted annually to China for participation in European fairs are to be considered as additional export facilities above the level of the already available quotas. They are consequently equivalent to additional facilities of exports above the level of the underlying restrictions already agreed and to which the agreed growth rate and pertinent provisions of Article 2.14 (a) and (b) do apply. No growth rate is foreseen for the additional annual amount or quantity for participation in fairs. This is also logical, since the additional amounts for fairs are granted for specific annual events and it would be a contradiction in terms, under these circumstances, to talk about annual growth".⁹

8. The TMB recalled that the European Communities had notified the respective quota levels for participation in European fairs for 2001 as being the levels in force on the day prior to the date of entry into force of the WTO Agreement for China. In light of the explanations provided by the European Communities, it was therefore assumed that such quota levels had a zero growth rate. On the basis of this, the TMB decided to seek the EC's confirmation of the Body's understanding that the European fairs' quota levels notified for 2001 had already been made available to China in 2002, and that this would continue in 2003 and 2004, in addition to the regular quota levels; it being further

³ See WT/ACC/CHN/49, paragraph 241.

⁴ See G/TMB/R/90, paragraphs 10 to 34.

⁵ *Idem*, paragraph 32.

⁶ See G/TMB/N/60/Add.5/Suppl.2.

⁷ See G/TMB/R/90, paragraph 32.

⁸ See G/TMB/R/92, paragraph 12.

⁹ See G/TMB/N/60/Add.5/Suppl.2.

understood that such additional quotas may be used by China exclusively at European fairs.¹⁰ In reply, the European Communities stated the following:

"The quantities [for the European fairs' quotas] are granted annually on an *ad hoc* basis. In practice, however, they have remained unchanged over the years, and although no commitment can be given formally as to the future, [the European Communities is] in a position to inform [the TMB] that in the basic regulation of application of the textiles import regime under preparation for the year 2003, these quantities are being proposed reconducted without modification. In all probability this will also be the case for the year 2004, although no firm undertaking can be given as of now."¹¹

9. The TMB understood that the term "basic regulation of the application of the textiles import regime" was meant to refer to the EC's implementing regulation that is issued and published annually and specifies the respective restraint levels applicable in the forthcoming calendar year. The EC's reply appeared to suggest that since European fairs' quotas constitute additional amounts above that of the regular quota levels, in a strict legal sense, the EC had no obligation concerning the annual levels of these quotas, rather they were amounts defined and granted annually on an *ad hoc basis*. In this regard, the TMB reiterated 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 re-conducted 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 latest in December 2003, of the quota levels to be formally approved for participation in European fairs in the year 2004.

10. 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.¹² 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".¹³ 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, keeping also in view : (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

¹⁰ See G/TMB/R/92, paragraph 4.

¹¹ G/TMB/N/60/Add.5/Suppl.4.

¹² See G/TMB/R/92, paragraphs 13 to 15.

¹³ *Idem*, paragraph 15.

the ability of the exporting Member to fully utilize the export possibilities available under the respective annual restraint levels".¹⁴

11. In taking note of the notification received from the European Communities, the TMB also observed 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.

12. The TMB reverted to its examination of a notification received pursuant to Article 2.1 from Turkey following the accession of China to the WTO¹⁵, in particular on the basis of additional information received from Turkey (G/TMB/N/422/Add.3) and the additional notification containing observations pursuant to Article 2.2 by China (G/TMB/N/447/Add.3). The TMB recalled that in a previous notification, China had reiterated its position that since "Turkey [had] failed to notify the appropriate growth rates [for the quantitative restrictions notified by it under Article 2.1] and to use [them] 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".¹⁶ In light of these observations made by China, the TMB, after a detailed consideration of this matter, had concluded that "it flowed from a reading of both Article 2.1 [of the ATC] 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 [had] 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 [had] invited Turkey to notify them as rapidly as possible and to apply them for the purpose of application of the provisions of Article 2".¹⁷

13. The TMB observed that the additional information received from Turkey in G/TMB/N/422/Add.3 had stated that it contained the growth rates in force on the day prior to the date of China's accession to the WTO. However the subsequent notification by China which referred to the additional information submitted by Turkey, sought clarification from Turkey on the growth rates of those quotas that were still in force on 1 January 2002. China's notification contained a table setting out the growth rates of such quotas applied on the day prior to the date of its accession to the WTO. Based on this, China stated that there existed discrepancies between Turkey's notification and the applied growth rates.

14. A comparison of the growth rates notified, respectively, by China and Turkey showed that in most product categories, the rates included in the Chinese notification were higher than those notified by Turkey. The TMB expressed its concern that though China had already raised this matter in mid-April¹⁸ and the Chinese observations, including those related to this issue had been first addressed by the TMB in mid-May¹⁹, the Body had not yet been placed in a position to establish with certainty the respective growth rates that were applied by Turkey. The TMB decided to bring the observations contained in the latest notification by China to the attention of Turkey. The TMB requested that, in order to have a clear picture of the growth rates applied to the quantitative restrictions maintained by Turkey on imports from China of the products covered by the ATC on the day prior to China's accession to the WTO, it be provided with the official documents which had formed the basis of the latest Turkish notification contained in G/TMB/N/422/Add.3, as well as any other additional

¹⁴ See G/TMB/R/92, paragraph 15.

¹⁵ See G/TMB/R/86, paragraph 4; G/TMB/R/88, paragraph 4; G/TMB/R/90, paragraph 49; G/TMB/R/91, paragraphs 15 to 17. See also G/TMB/R/88, paragraph 8.

¹⁶ See G/TMB/N/447/Add.2 and G/TMB/R/91, paragraph 15.

¹⁷ G/TMB/R/91, paragraph 17.

¹⁸ See G/TMB/N/447.

¹⁹ See G/TMB/R/88, paragraph 4.

information that Turkey deemed appropriate. Similarly, China was also requested to provide any official documentation, relevant observations or comments to the TMB that would help in better understanding the growth rates which had been applied by Turkey on 10 December 2001.

15. 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.²⁰ It was recalled that a number of elements of this notification as well as those provided by the United States as supplementary information in response to observations made by China, had already been considered by the TMB, such as 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.²¹ As regards the US' implementation of the growth-on-growth provisions, it was also recalled that the TMB had stated the following:

"[...] 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.²² 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.²³ 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.²⁴ 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 [TMB's September 2002] meeting."²⁵

16. The TMB observed that no follow-up information had been provided as yet from the United States in response to its request reflected in paragraph 33 of G/TMB/R/90, though seven weeks had already lapsed since the circulation of this report to all WTO Members. The TMB, therefore, decided to reiterate its request to the United States to provide information on this matter as soon as possible.

Notification under Article 2.17 of the ATC

17. The TMB began its review, pursuant to Article 2.21, of the notification made by Canada (G/TMB/N/456) of administrative arrangements agreed between Canada and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei). It decided, *inter alia*, to seek clarifications from the Members concerned on certain elements of this notification, including (i) whether Article 2.13, which was specifically mentioned in one of the provisions of the arrangements, remained in application in view of the fact that Chinese Taipei had become a Member of the WTO on 1 January 2002; and (ii) how the provision of statistics relating to the export or import of products not contained in the Article 2.1 notification of Canada's quantitative restrictions on

²⁰ See G/TMB/R/86, paragraph 5; G/TMB/R/88, paragraph 5; G/TMB/R/90, paragraph 50; G/TMB/R/91, paragraphs 7 to 14.

²¹ See G/TMB/R/91, paragraphs 7 to 14.

²² See G/TMB/R/90, paragraphs 5 to 34. (Footnote 15 in original report.)

²³ See G/TMB/R/90, paragraph 32. (Footnote 16 in original report.)

²⁴ See G/TMB/R/90, paragraph 33. (Footnote 17 in original report.)

²⁵ See G/TMB/R/91, paragraph 14.

imports from Chinese Taipei were deemed necessary in relation to the implementation of any provision of Article 2 of the ATC.

Notification under Articles 3.1 and 3.2(b) of the ATC

18. The TMB resumed its examination 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 (G/TMB/N/426 and Add.1) in response to clarifications sought by the TMB.²⁶ 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).

19. The TMB noted, *inter alia*, that Article 3.1 uses the word "restrictions" without any additional qualifications and that the footnote to this provision related to the same term states the following: "Restrictions denote all unilateral quantitative restrictions, bilateral arrangements and other measures having a similar effect."²⁷ The language of Article 3 does not limit the application of this provision to any specific type of restriction. The export quotas maintained by China affecting silk yarn and woven fabrics of silk are, undoubtedly, unilateral quantitative restrictions, corresponding to the definition provided in the footnote referred to above. Therefore, also in view of the lack of any further precision in the respective provision of the ATC, export restrictions are not *a priori* excluded from the scope of application of Article 3. This conclusion is also in line with past practice in the TMB, whereby the notification under Article 3 of certain measures affecting exports of some textile products was not questioned.²⁸

20. The TMB noted, furthermore, that the additional notification by China referred to "restrictions on certain textile products which fall under the coverage of ATC and are subject to Article 3 of [that] Agreement". This reference presumably indicated that, in the view of China, the measures in question should be considered under the applicable provisions of the ATC. It was observed that the notification of these export restrictions under Articles 3.1 and 3.2(b) did not appear to be in contradiction with the relevant portion of the Report of the Working Party on the Accession of China.²⁹

21. 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 getting 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.

22. Turning 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

²⁶ See G/TMB/R/86, paragraph 10 and G/TMB/R/92, paragraph 56.

²⁷ See footnote 4 of the ATC.

²⁸ Japan notified the application of an export approval system affecting certain products with certain specified destinations (United States, European Communities). For details see G/TMB/N/82 and G/TMB/N/175.

²⁹ See WT/ACC/CHN/49, paragraph 165.

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. On this basis, the TMB took note of the notification received from China.

Communications Received by the TMB

23. 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 been taken place in the TMB since the Body's communication of January 2002³⁰ 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 an 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.

24. 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.

Observations with Respect to Late Notifications

25. With respect to notifications addressed to the TMB after the relevant deadlines, the TMB reiterated that its taking note of late notifications was without prejudice to the legal status of such notifications.

Dates of the Next TMB Meeting

26. The TMB decided to reschedule its next meeting to 12-13 December 2002.

³⁰ See G/TMB/R/85, paragraph 13.