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Council for Trade in Goods
20 October 1997

MINUTES OF THE MEETING

Held in the Centre William Rappard
on 20 October 1997

Chairperson: Mr. T. Johannessen (Norway)

1. The meeting was convened by Airgram WTO/AIR/699 to continue the discussion which began on 6 October 1997 (item 5 of Airgram WTO/AIR/687) of the major review of the implementation of the Agreement on Textiles and Clothing (ATC) during the first stage of the integration process pursuant to Article 8.11 of the ATC.
2. The Chairman noted that this meeting was convened by WTO/AIR/699 for the continuation of the major review of the implementation of the Agreement on Textiles and Clothing during the first stage of the integration process, as foreseen in Article 8.11 of the ATC. He recalled that the review had been launched by the Council on 6 October when Members had presented their views on the general aspects or overall perspectives of the implementation process. At that meeting a work plan had been set comprising dates for four further meetings and the main topics to be taken up. These topics were the integration process, the application of the transitional safeguard mechanism and the application of GATT 1994 rules as defined in Articles 2, 3, 6 and 7 of the ATC. Any pending issues, along with discussion of possible conclusions or observations which the Council might consider appropriate, would follow at the fourth or subsequent meetings. The Chairman stressed that, while these topics would be taken up in order, there would be no time-limit for the completion of discussions and full flexibility would be maintained to revert to topics touched upon at earlier meetings would be maintained. He recalled that, at the Council's second meeting for the review on 16 October, discussion had centred upon the integration process with a number of important statements being made. A non-paper had been provided by Colombia on behalf of the ITCB members that were also WTO Members. He then suggested, bearing in mind the discussions on the integration process at the last meeting, that those delegations wishing to raise additional aspects relating to integration at the present meeting could do so, after which the Council would move to its examination of the application of the safeguard mechanism.
3. The representative of Thailand speaking on behalf of the ASEAN Members of the WTO referred to Table V of the tables circulated at the last meeting by the representative of Colombia and recalled the comments made by one Member that the increase in the quota levels in the first stage by the application of enhanced growth factors was "misleading" in that table. It had been argued by that Member that the growth factors would enlarge the quotas substantially and he had asserted that the application of the growth factor to a growth rate of 6 per cent under the MFA would increase the quotas by more than 30 per cent in the first stage. Thailand, however, considered that this assertion using a growth rate of 6 per cent could not be supported by facts as the growth rate of 6 per cent, claimed to be the norm under the MFA, was in fact the exception rather than the norm. In numerous cases, the bilaterally agreed growth rates, carried over to the ATC, had been less than 6 per cent and, for the major exporting Members, far less than that.

4. According to his calculations, the weighted average quota growth rate under the MFA agreements maintained by the United States with the current WTO Members was 4.6 per cent. The corresponding average growth rates for the European Community was 3.55 per cent, for Canada 5.12 per cent and for Norway 2.55 per cent. Adding a factor of 16 per cent to these average rates, the additional access in the first three years of the ATC could not lead to an increase in quotas of the magnitude one Member had claimed. The calculations presented in Table V had been based on the actual weighted average quota growth rates in the respective countries. The increases shown had been derived by applying these rates to the total volume of quotas for the WTO Members. Therefore, Table V accurately reflected the increases in quota access due to the application of enhanced growth factors. The main point, however, was that without meaningful integration the increases in the quotas by themselves were minimal and could not be counted upon to produce a smooth and effective integration of this sector into WTO rules.

5. The representative of Pakistan recalled discussions at the last meeting on the integration process and said that it had been established that the integration path chosen by the four Members maintaining restraints had not led to any commercially meaningful liberalization of textiles and clothing trade and that the integration in the first two stages by these Members had, at best, been a mechanical exercise. The integration process had not met its avowed objective of progressive liberalization as enshrined in the Preamble to the ATC and as reaffirmed in the Singapore Ministerial Declaration. He considered that this fact had been tacitly recognized by some importing Members. He said that he was concerned to hear, even implicitly stated, that there was a trade-off between progressive liberalization by the restraining Members on the one hand and additional access to markets of the exporting Members on the other. Such a contention could not be supported by the structure, provisions or language of the ATC. If claims of trade-offs were to be made in respect of market access commitments of textile exporting Members, they could only be made in the context of respective commitments of all WTO Members in the market access exercise. However, there was no evidence that the exporting Members had not fulfilled their market access obligations and this had been reaffirmed in paragraph 297 of the TMB report.

6. The representative of Pakistan also recalled there had been a reference in earlier discussions to integration under Articles 2.7(a) and 2.7(b) of the ATC which had implied that the obligations under these two sub-Articles were comparable. He believed that the obligation to phase out the MFA restraints applied only to the four Members maintaining such restraints. Their responsibilities under the ATC integration programmes were quite different from the other WTO Members which had not maintained MFA restraints but were also obliged to notify integration programmes. He had also heard it argued that the "growth-on-growth" provisions would liberalize global textiles and clothing trade over the passage of time and double-digit growth figures had been quoted. It was his understanding that the growth rate inherited from the MFA had been 6 per cent in the case of some exporting Members; it was slightly higher in the case of a few other Members; but in the case of some major exporters, the MFA-inherited growth rate was much lower than 6 per cent. Hence, to arrive at the base figure, one should either take a simple average or a weighted average and this was what the ITCB member countries had done in arriving at the figures for increased market access in their Table V.

7. Pakistan considered that the fundamental point was that the drafters of the ATC had visualized two paths to the progressive liberalization of textiles and clothing trade; one was progressive and commercially meaningful integration of textile and clothing products into GATT 1994 and the other was the "growth-on-growth" provision. The two paths were not substitutes; rather, the intention of the drafters was that these two modes of liberalization would proceed in tandem. Therefore, arguments that the "growth-on-growth" path would compensate for the commercially meaningless integration of products denoted a blatant departure from the letter and spirit of the ATC. He went on to comment on the use of the transitional safeguard mechanism, stating that the TMB report was very revealing in this regard. The table in paragraph 173 of the TMB report

showed the magnitude of the problem in that one major importing Member had sought consultations with 14 Members in 26 cases during the period 1 January 1995 to 24 July 1997. In his view, the invocation of Article 6 of the ATC in so many instances against so many developing country Members within two and a half years could not be considered to be sparing use of the safeguard. It violated the first prescription of the transitional safeguard in Article 6.1 of the ATC, that measures should be initiated after very careful consideration of the facts. It seemed that all of the actions taken had not met this criterion as borne out by the fact that in a number of instances the requests had been rescinded even before the TMB review.

8. It was, however, not only the number of requests for consultation which had caused concern, but more importantly, it was the trade distortive implications of such actions, particularly in cases when safeguard measures had been applied and subsequently rescinded. As an example, he recalled a United States safeguard action under Article 6.7 of the ATC with respect to Pakistan on part of category 301. This action had been formally notified in April 1997; however, following the bilateral consultations, the United States had decided not to impose the restraint. Nevertheless, the damage to Pakistan's exports had already been done and it continued to persist even to the present time. To illustrate this damage, he noted that exports of the products involved had peaked at 353,811 kgs in April 1996 but following the United States action in April 1997, exports had plummeted to 81,000 kgs in May 1997 and even today exports of this category to the United States remained far below the peak level attained in April 1996. In addition to the direct cost in the form of the foregone exports, indirect costs of job losses and diversion of potential investment also had to be considered.

9. In these circumstances, Pakistan proposed that the Council should examine three questions: whether the recourse to the transitional safeguard mechanism in the past three years could be categorized as "sparing" and "circumspect"; whether such measures had been taken with due regard to Members' obligations under Article 6 of the ATC; and whether such measures had been inhibitive in their impact. If the answers to some of these questions were "no", then the Council should make appropriate recommendations to serve as a guide for the future.

10. The representative of Hong Kong, China referred to earlier comments that the claim by the United States of a 6 per cent growth rate being inherited from the MFA was not factual. He said that, in reality, the growth rates in quotas with the United States, inherited from the MFA, were considerably lower, with a weighted average of 4.5 per cent per annum. Extrapolating from a 4.5 per cent average growth rate to 2004, one would arrive at quotas 55 per cent larger in 2004 than in 1994. Applying the enhanced growth rates prescribed in the ATC, quotas in 2004 would be larger still. This, however, ignored the fact that the 4.5 per cent increase which would have occurred under the MFA could do little by way of liberalization as past experience under the MFA had shown. He said that economies did not stand still, demand might surge and prolonged artificial restrictions would continue market distortions. This would result in the loss of competitiveness in the restricted exporters, which could not be compensated for by the MFA base rates and the ATC enhanced growth.

11. He also said that it would be misleading to consider that equal treatment in terms of growth was being accorded to all restrained products, across the board. Rather, the 4.5 per cent growth figure was the weighted average MFA growth rate actually calculated for all WTO Members which were restricted in the United States' market. Any assessment of the economic effect of this growth rate must take into account the fact that quotas with low rates of utilization tended to have higher growth rates than the quotas with high utilization. In other words, higher growth was found in product categories where growth was least required. Hong Kong, China drew attention to its growth rates for exports of clothing to the United States which would not be integrated until 1 January 2005. A total of 45 clothing categories would not be integrated until the final stage of the ATC; four of these categories had a growth rate as low as 0.184 per cent; about half of these categories had growth rates below 2 per cent; and only ten categories had growth of 4.6 per cent, the highest rate accorded to clothing exports from Hong Kong, China to the United States. The weighted average growth rate in

respect of the 45 clothing categories was 2.1 per cent. It was also recalled that the withholding of restrained products from integration until the very end of the ATC would result in serious problems. This should be considered by the Council in assessing the balance, or the lack of balance, of rights and obligations in the way the ATC was being implemented.

12. The representative of Hong Kong, China also drew a comparison between Stage 1 and Stage 2 integration programmes. Looking at clothing, where integration programmes had been the least adequate, he could accept that for all four restraining Members the percentages of clothing to be integrated in Stage 2 would be higher than under Stage 1. In the case of one Member, the percentage in Stage 1 was only 0.38 per cent, a token fulfilment of the provision in the last sentence of Article 2.6 of the ATC. In the case of another Member, the improvement in the share of clothing to be integrated under Stage 2 was from 1.92 per cent to 1.98 per cent. With regard to a third Member, there was a small improvement from 1.13 per cent to 1.65 per cent, although 1.65 per cent was the lowest percentage for clothing to be integrated under Stage 2 by any of the four restraining Members and it could hardly be considered as satisfactory. The marginal improvements in Stage 2 over Stage 1 still left clothing significantly under-represented in products integrated in Stages 1 and 2. The percentages of yarns and fabrics integrated were 5 to 10 times higher than for clothing. That the Stage 2 programmes might be improvements over their predecessors did not support the argument that there existed a balance of rights and obligations in ATC implementation.

13. Hong Kong, China recalled earlier discussion on the task of the Council in this process and observed that the major review was more than a simple mathematical exercise; that integration should be, though it had not been, accompanied by progressive liberalization; and that at issue was whether the overall purpose and object of the ATC were being fulfilled. Furthermore, integration under the ATC was not addressed only in Articles 2.6, 2.7(a) and 2.8(a) of the ATC; questions had also been raised concerning Article 1.5 of the ATC which contains provisions directly related to integration. None of the restraining Members had addressed Article 1.5 in the current major review, although earlier one had provided some information on structural adjustment as reflected in paragraph 76 of the TMB report. The question was asked as to how the Council could assess if progress was being achieved in respect of the processes prescribed in Article 1.5 without which the major review would not be complete.

14. The representative of the United States responded to comments made with respect to its programme of integration, specifically concerning the weighted average growth rate of 4.6 per cent advanced by some Members. He argued that this figure would not change the analysis that he had made at the last meeting. He pointed out that the United States imported approximately two-thirds by quantity of its textile and clothing consumption and if 4.6 per cent was used as the starting point for a growth rate and using as an example a quota of 100, in the first year of the ATC that quota would have grown to 105, in the second year 111, etc. and in the eighth year, in the last stage of accelerated growth, the level would grow from 150 to 163, in the ninth year to 177 and in the tenth year to 191. In a situation where two-thirds of domestic requirements were already being imported, having the original quota of 100 growing to 191 by the tenth year would indicate that at some point well short of the tenth year, on average, growth would be far beyond what was necessary to fulfil. Even assuming that imports were to take the entire remaining domestic market share, there would be far more than necessary in the enlarged quota to accomplish that.

15. Referring to the point made earlier that some of the growth rates were far less than 4.6 per cent, he said that this was true and these lower growth rates tended to be concentrated in two WTO Members (Hong Kong, China and Korea) and in two non-WTO members (China and Chinese Taipei). The quotas of these latter two exporters had been reduced to these lower growth rates. The effect of these lower growth rates was to spread more of the production from some countries where there was high quota utilization, like China. In fact, of the major suppliers to the United States' market, China was the only country that had a substantial utilization of its quotas. The

quota utilization in Hong Kong for many categories where the growth rates were quite low was also low, so there was no effective restraint imposed by those quotas. The net result of this, in terms of actual quota restraints proving to be an impediment, was that if one looked at these category-by-category, one could come to the conclusion that these restraints would, over the ten-year period, become far less binding.

16. He could not agree with the view that in the United States' integration programmes the selection of products was not satisfactory and this indicated a flaw in the ATC. When the ATC was negotiated, it was a balance of concessions with some aspects considered to be favourable to exporters and other points favourable to importers. In the end, the balance was considered acceptable. He said that nothing put forward in the integration programmes should come as a surprise to the Members that were affected by these restraints. This was the negotiated Agreement, so to say that one part of it was considered unacceptable, such as integration, showing that the ATC was flawed, was not a correct conclusion.

17. The representative of the United States provided comments on some of the points raised by Hong Kong, China and India. He first noted the distinction which had been made between the increase in quota growth that would have occurred if the MFA quotas had continued uninterrupted and the situation resulting from accelerated growth rates. He referred to the comments by Hong Kong, China concerning the growth that would have taken place without the accelerated growth factor, which was about a 50 per cent increase over ten years, applying 4.5 per cent average annual growth. Using this growth rate, a base quota of 100 would have increased to a quota of 150, however, using the figure the United States had calculated as an average growth rate, at the end of year 10 with accelerated growth would produce a quota of 191. The contribution of accelerated growth was clear; the different base growth rates, however, were a distinction that did not really matter. The important point was the effect of quota growth on the restraint and whether over the ten-year time-span, for many or all of the quotas that were currently being filled, the quota growth would cause them to no longer be true restraints. He also referred to India's comments on the impact on quota growth of the increase in consumption in the United States and considered that this did not change the final analysis either. The growth in consumption in the United States market for clothing, in volume terms, over the long-term had been quite stable, between 2 and 3 per cent per year. This would fluctuate according to the economic cycle, being less in times of recession and more in times of strong growth. However, the point remained that over a relatively long period of time, there would be a modest increase in consumption and this should be factored into the situation, but the increase in consumption in volume terms would be small enough that it would not overwhelm the "growth-on-growth" figure that would become very large at the end of the ten years.

18. He also questioned the comment that the level of United States' production would actually increase by 2005. He suggested that, if one were to look at two of the major sub-sectors in this industry, fabric production and clothing production, one would find different situations. The United States was a competitive producer of fabrics and exports had been increasing over time. As a result, United States' production of fabric could very well be larger in the year 2005 than at present. On the other hand, with respect to clothing, the experience was quite different. As recently as 1992 the United States had more than one million production workers in the clothing sector; however, by 1997 this number had dropped below 700,000 for the first time. While there had been some modest productivity increases over the period from 1992 to 1997, this would not be enough to account for the very large decline in employment in this sector. The expectation in the United States was that over the next ten years this decline in employment as well as production in the clothing industry would continue. There was, however, an expectation that in certain sectors of the clothing industry, where the United States was competitive, there were some export opportunities, particularly as import restraints maintained by other countries were removed and free trade in textiles and clothing around the world was achieved. He said that he would seriously question any econometric analysis that predicted that between now and the year 2005, there would actually be an increase in the production of clothing in the United States.

19. The representative of India referred to a statement by a Member to the effect that the ATC was an Agreement that all had accepted and in response to this comment, he recalled that, while not questioning the ATC, it was a fact that the ATC was not a negotiated Agreement but was put forward by the then Director-General of GATT, Mr. Dunkel, as a compromise. Therefore, it was based on negotiations but was not a negotiated Agreement. Also, therefore, the so-called "economic package" in this Agreement which dealt with integration and growth factors was not something that had been negotiated. He was concerned that two different matters were being confused and treated as substitutes or alternatives, one being the integration process and the other what was referred to as "growth-on-growth" or growth factors. When it was decided that there would be a ten-year transition period, as a *quid pro quo* for accepting this period, the exporting Members that wanted faster liberalization were told that during the transition period there would be liberalization by way of integration, that is, there would be elimination of restrictions during the transition period. For products which remained under quota, these would grow faster than under the MFA regime. The transition period, therefore, provided for two types of liberalization. They were not substitutes for each other, but were two independent tracks.

20. With respect to the integration process, he recalled that the Annex to the ATC contained a mixture comprising products under restrictions and a large number of products not under restriction. This had resulted in a situation which had enabled the importing Members to integrate products not under restraint. As a result, there was no real liberalization by the route of integration. He also referred to the Preamble to the ATC, which visualized the integration process as the means for liberalization. The main thrust of liberalization anticipated by the ATC would be through the route of integration, however, as exporting Members had pointed out, this route had not been commercially meaningful to many of them in the first stage. Concerning growth factors, it had been shown in the discussion that "growth-on-growth" had not resulted in significant market access. The assumption of importing Members that the quota increases through the growth factors would be substantial was not accurate. They ignored two factors, one, it was first necessary to work out the situation if the MFA agreements were to continue for ten years and compare this to the access achieved on the basis of the growth factors. Second, in looking at any possible changes in import penetration into a market, one must build into the calculation the increase in demand over time. He referred to a paper pointing out that at the end of the ten-year period there would be more protection in the United States than there would have been otherwise.

21. The representative of Switzerland said that the Council's review should start from the principle that the ATC was an Agreement that had been accepted by all Members and which set down rules and obligations for all Members along with a number of objectives. As regards the manner in which the Council should evaluate the integration process, he referred to paragraph 71 of the TMB report which set out a possible context for the review. Also, the statistical tables provided by Colombia should be read in parallel with that paragraph. He expressed surprise that some Members seemed to be inferring that certain other Members had violated provisions of the ATC. If this were to be the case, Switzerland would also be surprised that the provisions in the ATC which made it possible for Members to question measures taken by other Members had not been used more frequently in the past three years. If certain aspects of integration had been questioned in the TMB, it would then have been up to the TMB to conduct a review of the issue and to make recommendations. He recalled a reference to the TMB by one Member on a technical issue which concerned the integration programme of another Member and, on the basis of this action taken, it was possible to settle the problem. But he was surprised that it should be the Council that should be called upon to act as a "quasi-complaints body" when there was another body provided for in the Agreement to deal with any dispute and to help the parties concerned find a settlement that would be compatible with the Agreement.

22. Regarding the discussion on the objective of the Agreement, that is, liberalization of trade in textiles and clothing, he indicated that while the integration process had liberalization as an objective,

one should, nevertheless, note that the integration of textiles and clothing into GATT disciplines did not always mean liberalization. There were a number of measures possible under GATT which did not have a liberalizing effect. Regarding the way in which the Council might assess the liberalization process and in the light of the elements referred to in paragraph 71 of the TMB report, Switzerland was concerned by the manner in which the integration programmes of certain Members had been constructed. Progressive integration also contained an objective of restructuring as it was being carried out over a transition period which must make it possible for the textile industries protected by quotas to restructure and to be able to operate in an environment which would be placed entirely under GATT disciplines. The backloading of the integration process would make restructuring all the more difficult. While this backloading stood out clearly in the first phase of integration, the outcome of other phases would give a clearer picture of how these protected textile industries would adapt to a new environment of competition.

23. The representative of Pakistan requested the United States to explain if the quota increase from 100 to 190, in the example he had used earlier, would refer to absolute growth or incremental growth. In his view, when the figures were analysed, they did not appear impressive as the annual quota growth or market access improvement had to be seen in the light of the growth in demand. He referred to a study which claimed that the demand for textile imports in the major importing Members had ranged between 7 and 10 per cent per annum. This would imply that, as long as the quota growth fell below the growth in demand, then the need for quotas would go on indefinitely. He also asked if growth in quotas was being substituted for the obligations of the Members concerned under integration. This could not be done as it was not provided for in the Agreement. Consequently, to argue that the quota levels would increase from 100 to 190 over a ten-year period would not be correct as it would be necessary to use the incremental figures and they would have to be analysed in the context of the overall growth in demand.

24. The representative of Norway recalled that, at the Council's last meeting on 16 October, Pakistan had raised the question whether it could be understood from Norway's statement that the obligations which countries had undertaken in Article 2.7(a) of the ATC were the same as those in Article 2.7(b). In response, Norway explained that the integration process was currently concentrated in less-processed textile products with a limited integration of made-up textile products and clothing. Norway had not noted any substantial differences between importing and exporting Members in the products chosen for integration. All Members seemed to have adopted the similar rationale, stemming from the perceived need to protect these industries. This could be understood on the basis that integration of a product meant that the Member concerned would give up its right to use the ATC safeguard provisions for that particular product. However, Norway could, to a certain extent, understand the disappointment expressed by some exporting Members with the first and second stages of the integration process and what they saw as a lack of meaningful progress towards increased market access in the textiles sector.

25. The representative of Hong Kong, China commented on some of the points made by others. He first referred to the quota growth figures over the ten-year transition period and said that, according to his calculation and based on 4.5 per cent annual quota growth, after ten years one would reach a total increase of 55 per cent. Adding the "growth-on-growth" element would bring the total growth closer to 90 per cent over ten years. However, if one were considering a ten-year period, then one must also take into account that many of the quotas with high growth rates would be included in Stage 3 of the United States' integration programme. Therefore, the figure for a ten-year period would be accurate if the calculation included only quotas that would remain until the very end of the ATC. He recalled the United States' comment that a few exporters had been singled out for exceptionally low growth but it was his understanding that, on average, in respect of clothing from all suppliers, the growth rates accorded for the items to be integrated at the end of the transition were still considerably lower than the average of 4.5 per cent. He said that the "growth-on-growth" element came into the debate as it was the only new factor under the ATC as the normal growth rates would have been the

rates already in effect under the former MFA. No-one considered the MFA or its growth rates to be liberalizing instruments; therefore, it was a legitimate expectation that substantially more should be done as regards growth. However, the "growth-on-growth" factor of 16 per cent for Stage 1 was indeed insignificant as had been shown in Table V of the tables presented by Colombia. In the first stage the annual increase in the growth rate as a result of "growth-on-growth" alone amounted to no more than two-thirds of 1 per cent. The population growth in the United States was higher than this effective growth increase. Integration was much more than growth and leaving quotas in place until the very end of the transition would not give the impression that the ATC rights and obligations were being met. He also expressed concern that one major importing Member had indicated its intention to retain visa requirements in respect of products after they are integrated into GATT rules.

26. Responding to points raised by Hong Kong, China and Pakistan, the representative of the United States said that the statement that the MFA had not been a liberalizing instrument was not a correct analysis; in fact, over the span of the MFA there had been substantial industrial adjustment. In the 1970s there had been more than two million production workers in the United States clothing sector and this number had now dropped below 700,000. The growth rates embodied in the MFA bilateral agreements of the United States were larger than the increase in consumption. While prices might have fluctuated greatly, the increase in consumption had been relatively stable and, in volume terms, relatively low. Consequently, under the MFA, the percentage of United States' consumption represented by imports had increased to about two-thirds of total consumption. This import penetration in volume terms had continued under the ATC and, therefore, he argued that the ATC had not been an abrupt departure from the policy that had existed under the MFA. The adjustment had been successful under the MFA and was continuing at the present time.

27. Concerning a point raised by Pakistan asking whether the concepts of integration and accelerated growth were being mixed, the United States understood that they were distinct mechanisms, although both would arrive at the same point at the end of the ten-year transition; namely, the full integration and the removal of restraints. He considered that the accelerated growth would cause quotas to grow from their present levels to levels where they would no longer be binding, well before the ten-year transition was completed. Integration, on the other hand, was a much more precise and definitive element which, by the beginning of the eighth year, would provide for 51 per cent of the products in the Annex to the ATC to be integrated into GATT rules. Everyone knew exactly what the United States would integrate in Stages 2 and 3, so the precise parameters of what 51 per cent encompassed for the United States could be known by everyone. Only at the end of year 10 would the remaining 49 per cent be integrated into GATT rules and this was a commitment entered into by the United States and remained unchanged. Therefore, both mechanisms would arrive at the same point on their own; however, operating together, there was a double insurance that at the end of year 10, one would arrive at the point where quotas no longer existed.

28. The representative of Canada provided observations with regard to the issues of integration and growth factors. He recalled a suggestion that the Council should be aware of the negotiation process for these provisions; however, he considered that this would only bring the Council to the present situation with the ATC as it stands. What was important was the objective of the ATC, that by 2005 the elimination of restrictions and other inconsistent measures would be achieved. He was surprised that there had been suggestions in the review that growth factors and the integration process were being viewed as substitutes although they did, in fact, complement each other. He agreed with the comments by Switzerland that the Council might find a means to evaluate the path of integration along the lines of paragraph 71 of the TMB report which set out the various factors to be considered when examining integration.

29. The representative of Thailand speaking on behalf of the WTO Members of ASEAN recalled an issue mentioned earlier by Hong Kong, China concerning the intention of the United States to

maintain visa requirements on products which had already been integrated into GATT. He said that the practical effect of integrating products into GATT was that the integrated products were excluded from the coverage of the ATC and were subject only to the normal rules and disciplines of GATT. This included, in particular, those provisions relating to non-discrimination among supplying countries and prohibition of quantitative restrictions. He considered that an essential consequence of the integration of restricted products was the elimination of the specific requirements applied in connection with the import or export of these products due to the existence of quotas. Such requirements included those related to the issuances of visas by exporting Members. The administrative burdens connected with the visas amounted to additional costs as well as delays in the dispatch and clearance of exported products. It was understood that the United States was seeking to continue the export visa arrangements for products that would be integrated from 1 January 1998 because these arrangements were necessary for accurate data collection and to prevent circumvention.

30. It was stressed that the continuation of visa and other requirements, even after the products concerned had been integrated, would give rise to important issues in connection with the application of non-discriminatory treatment under the GATT (Article I), fees and formalities (Article VIII), and the implications of the integration process. The intention of the United States to continue visa arrangements *vis-à-vis* products already integrated went against the letter and spirit of the ATC and GATT 1994 and risked undermining the effectiveness of the integration process to attain genuine liberalization of trade.

31. The representative of India expanded upon an earlier intervention, emphasizing that the ATC's "growth-on-growth" provisions would not only fail to liberalize quotas, but taking into account the expected increases in consumption, they would also result in a situation of quotas becoming more protective over the ten-year transition period. Contrary to the assumption made by some Members, the "growth-on-growth" factors would not significantly increase market access. He also expressed appreciation for the clarification by the United States that integration and "growth-on-growth" were two different matters and were not substitutable. He recalled that, in the Uruguay Round negotiations, Members had been assured that during the transition period there would be liberalization through two routes, integration under which quotas in respect of some products would disappear and, where quotas continued, they would grow at a faster pace than under the MFA. Therefore, these were two distinct matters and should be treated as such. He agreed with the view of some other Members that the Council should take into account what the TMB had said in paragraph 71 of its report.

32. The representative of Colombia also speaking on behalf of the Members of the WTO which are members of the ITCB, introduced a non-paper which was then distributed to all Members, concerning the application of the transitional safeguard mechanism in Article 6 of the ATC. He noted that the TMB had also made an important analysis of this subject which could be found in paragraphs 78 to 181 of its report. The TMB report had covered, in a very detailed manner, the scope of Article 6, the individual actions reviewed by the TMB and those taken to panels. The intention in providing the non-paper was to provide a clear analysis which would help Members to focus the debate on this topic. He noted that the United States had been singled out many times in the non-paper, but in view of the fact that it was a frequent use of this mechanism, it was impossible not to mention the country by name.

33. He noted that Article 6 of the ATC prescribed the following conditions for application of transitional safeguard actions: they should be applied as sparingly as possible and they should be applied consistently with the provisions of Article 6 and the effective implementation of the integration process. It was essential to assess the topic of the application of transitional safeguards on the basis of these conditions, that is, whether it had measured up to these requirements. Tables I to V of the non-paper were presented in order to enable an assessment of the application of safeguard actions taken by the United States. He noted that other WTO Members which maintained restrictions under the MFA had not invoked Article 6 of the ATC during the first stage. He also explained that

Table I showed that except for the eight bilaterally agreed restraint measures, most of the actions taken by the United States had to be rescinded. Furthermore, none of the actions challenged before the TMB and/or the dispute settlement Panels was found to be justified. Table II showed that of the eight bilaterally agreed restraint measures, only in one case had the TMB clearly observed that the agreement was justified in accordance with Article 6. Table III showed that a substantial portion of additional trade had been affected by the application of safeguard actions. In this regard, the TMB had also noted that it "is aware of the implications for trade of requests for consultations made with a view to introducing safeguard measures, in particular, when transitional measures were applied and subsequently rescinded" (paragraph 174 of its report).

34. He concluded, as had the TMB (paragraph 176 of its report), that "The examination of the requests for consultations and of the resulting measures made by the TMB and, in some cases, subsequently DSB panels, led to the conclusion that in most cases the United States did not comply with important obligations arising from Article 6".

35. The representative of Costa Rica referred to the transitional safeguard mechanism provided in Article 6 of the ATC and stressed that safeguards were intended as an exceptional type of measure which could be used during the transition period with regard to products which had not yet been integrated into GATT rules. In view of the clearly discriminatory nature of the safeguard and being contrary to the MFN clause, it was stipulated in the ATC that this exceptional measure should be applied as sparingly as possible, consistently with the provisions of Article 6 and with the effective implementation of the integration process. Unfortunately, the implementation of the ATC had brought about a different reality in which these principles had been disregarded on numerous occasions.

36. He explained that, over the short time of application of the Agreement, safeguards had been used abusively by one of the Members maintaining restrictions under the MFA, making 27 requests for consultations under Article 6. This had caused great concern with respect to the manner in which the obligations of the ATC were being applied and, in more general terms, with respect to liberalization in this sector. A message of warning had been sent at the Singapore Ministerial Meeting that the use of safeguard measures in accordance with the ATC should be used as sparingly as possible. He said that the data provided by Colombia clearly showed that the use of safeguards over the past three years had strayed from the objectives of the ATC and had seriously disregarded its provisions. Particularly, use of safeguards had brought negative consequences for the trade of the Members against which restrictions had been imposed. He noted that the TMB had indicated in paragraph 174 of its report that there were consequences for trade of requests for consultations towards establishing safeguard measures.

37. Costa Rica had faced requests for consultations made by the United States and in one instance was forced to turn to the WTO dispute settlement system after the matter could not be resolved within the TMB. Despite the adverse consequences resulting from the application of the restriction, the Panel report adopted by the DSB had shed light on the interpretation of different provisions of the ATC and had clearly indicated the path that should be followed in future if a Member wished to make use of the safeguard. Referring to the Panel report on this case and to the conclusions reached by the Panel and by the Appellate Body, he wished to make it clear that while the Panel had concluded that the ATC did allow for the use of new restrictions, they were possible only on an exceptional basis and should be applied sparingly. The Panel report had indicated that exporting Members could legitimately expect that market access and investments should not be frustrated by the application of such measures by importing Members. The Panel had confirmed that, in order for a restriction to be compatible with Article 6 of the ATC, it must be based on a determination made pursuant to the procedure in Articles 6.2 and 6.4 of the ATC. It had also concluded that only if the existence of serious damage or threat of serious damage had been demonstrated pursuant to Article 6.2 and only if that damage had been attributed to a given Member, pursuant to Article 6.4, could the importing Member invoke Article 6.7.

38. He noted that both in the case of underwear exports from Costa Rica and of shirts and blouses from India, the reports stated that the United States had not considered the relevant factors identified in Article 6 and thus its determination of serious damage or threat of serious damage had been incorrect. Another important finding of the Panel was that the conclusion of the existence of serious damage required the Member adopting the measure to prove that damage had occurred; whereas, in a conclusion of actual threat of serious damage it was required that the Member prove that if measures were not adopted, it was very probably that there would be damage in the near future. Regarding the matter of non-retroactivity in the application of the safeguard, the Panel's findings had the effect of putting a stop to the previous practice of the United States. He recalled that in the cases where the United States had made requests for consultations under Article 6 of the ATC it had applied restrictions retroactively to the date on which such requests were made. On this point the Panel had reached the conclusion that the restriction could be applied as of the date of publication of the request for consultations, however, the Appellate Body had modified this, concluding that according to Article 6.10 of the ATC the restraint measure could only be applied after the expiry of the 60-day period provided for holding consultations. This meant that restrictions could not be applied retroactively to the date of the request for consultations.

39. Costa Rica believed that the Panel reports had set out a clear guide for the interpretation of the ATC, which should be followed by Members wishing to have recourse to this mechanism in the future. The TMB had indicated in paragraph 181 of its report that it had held a general debate on the two Panel reports with the aim of identifying those aspects of the legal conclusions which could constitute guidance for them regarding their approach and methodology in the review of measures. He considered that the conclusions of the Panels should constitute a guide for the TMB and he urged that Body to continue its debate and to submit the conclusions of that debate to the Council. He said that, on the basis of the conclusions of the Panels, and of the TMB, which had indicated that in most of the cases the United States had not complied with the obligations under the ATC, Costa Rica considered that the Council should recommend that the implementation of the ATC be carried out in full respect of those obligations, in particular that safeguards be applied as sparingly as possible and in strict compliance with the obligations set forth in Article 6 of the ATC.

40. The representative of Norway noted that 55 WTO Members had indicated their wish to retain the right to use the safeguard clause in Article 6 of the ATC. Only nine Members had explicitly waived such a right and these nine deserved to be commended for their decision. It was of some concern that 48 Members had not complied with the obligation to notify their decision in this regard. Norway noted that the TMB had not examined the legal consequence of a lack of such notification or the implications regarding the rights of Members to use the safeguard mechanism. It was further observed that the deadline for tabling such notifications had elapsed.

41. Norway recognized the right of those Members which had fully complied with their notification obligations to apply the safeguard mechanism in accordance with the ATC. However, it was noted with optimism that only two Members had so far chosen to do so. Moreover, there was a noticeable decreasing trend in the application of the safeguard in the recent period. He considered that the TMB should be complimented for the standards it had established for reviewing the application of the safeguard provisions. This could have a discouraging effect on new requests for restrictions and indicated that Members of the WTO were taking seriously the recommendations of the Singapore Ministerial Declaration to use the safeguard provision as sparingly as possible. Norway also noted that one Member which had not applied restrictions under the MFA had done so under the ATC. Future developments would show whether this was indicative of a trend where additional countries which had opened their markets would be in need of short-term protection for the domestic industry, as provided for in the ATC.

42. The representative of Hong Kong, China considered that the assessment to be made by the Council was whether the specific provisions of Article 6 had been fulfilled. On the positive side of

this question, he noted that three of the four Members carrying over MFA restrictions had not had recourse to Article 6. The fourth Member, however, had done so in many cases and had been found not to have observed the specific provisions of that Article. The first provision not being observed was that the transitional safeguard should be applied as sparingly as possible. He could not consider that recourse to Article 6 on no less than 27 occasions in under three years could be regarded as defensible in overall terms, particularly when in most instances the recourse had been found to be unjustified on the merits of the individual cases.

43. He noted that a number of reasons had been given as to why the safeguard measures had been found to be unjustified. The information had been variously considered to be inaccurate, inadequate, inconsistent, inconclusive, indefinite, vague, imprecise and in some cases not specific to and not even related to the particular industry. Other findings had included the failure to make any analysis in respect of the actual strength of the serious damage and failure to address whether damage had been caused by factors other than imports. He was concerned that in many cases where recourse to Article 6 had been found to be unjustified, legitimate export trade had suffered unwarranted harassment. Therefore, in assessing the extent of additional liberalization, and whether the ATC was on track, the elements of the major review conducted so far had suggested on the one hand that in the first three years integration had not resulted in any reduction of restrictions, while on the other hand, the invocation of transitional safeguards had resulted in the introduction of additional new restrictions. This did not suggest that a balance of rights and obligations was being struck.

44. The representative of Egypt said that the data in the tables provided by Colombia, along with the conclusions reached by the TMB and included in paragraphs 174 and 176 of its report, showed a clear case of inconsistency in the application of Article 6 of the ATC. The question which the Council must address, therefore, was how it would apply the provisions of Article 8.12 of the ATC and take the necessary measures to adjust the current situation in the implementation of the ATC to ensure the balance of rights and obligations of Members were protected.

45. The representative of Thailand speaking on behalf of the ASEAN Members of the WTO recognized the right of Members to apply the provisions of Article 6 of the ATC, however, they must be applied consistently with the procedures and obligations contained in the ATC. Also, because Article 6 allowed for the discriminatory establishment of trade restraints, inconsistent with Articles XI and XIII of GATT, the provisions must also be applied as sparingly as possible.

46. On the basis of the experience with the application of the safeguard since the coming into effect of the ATC, it was observed that attempts had been made to apply it "recklessly and flagrantly" and without due regard to the letter and spirit of the ATC. In paragraph 176 of the TMB report, it was stated that the examination of the requests for consultations and of the resulting measures by the TMB as well as by the DSB Panels led to the conclusion that in most cases the United States had not complied with important obligations associated with Article 6.

47. He noted that the United States had made the largest use of the transitional safeguard mechanism, a total of 27 requests for consultations, 24 in 1995, one in 1996 and two in 1997. The anomaly in this situation was that while they had seen a large number of actions by the United States under Article 6 during the past three years, on the other hand, there had been no safeguard actions by other restraining Members. The number of Article 6 applications raised concerns as to whether the principle of "sparing use" was being genuinely respected and honoured by the United States.

48. It was considered that the findings of the Panels and the Appellate Body with respect to the use of transitional safeguards in respect of the two specific cases involving clothing trade had contributed, in terms of legal interpretation and application, to the WTO jurisprudence. The views maintained by exporting Members that the approach of one Member had been improper and unjustified had also been confirmed. He said that the Panels and Appellate Body in both cases had

provided clear rulings that: first, at least all of the economic variables listed in Article 6.3 of the ATC must be considered and examined; second, only when damage or actual threat thereof had been demonstrated and attributed under Article 6.2 and 6.4, could restraint be imposed; and third, the definition of serious damage and actual threat thereof must be strictly observed.

49. Referring to paragraph 174 of the TMB report, he noted that the TMB was aware of the serious implications for trade resulting from requests for consultations, in particular, when transitional measures were applied and subsequently rescinded. It was a well-known fact among exporting Members that the most damaging effect, arising from the issuance of a request for consultations on a safeguard action, was the "trade-chilling" effect that had often led to a range of potentially adverse implications. Table III, in the non-paper circulated by Colombia, demonstrated that substantial portions of trade had been affected by the application of safeguard actions. Besides bringing new trade under restriction, these actions had also caused disruptive effects for existing exports to the United States' market by the Members concerned.

50. The representative of Thailand said that the ASEAN Members' concern was both substantive and systemic. They were of the view that faithful compliance with the provisions of the transitional safeguard would foster confidence that would contribute to strengthening the multilateral trading system. Therefore, Members contemplating the use of this provision were urged to take full cognizance of the obligations and requirements in this regard as set out in the ATC.

51. Conversely, it was noted that irresponsible use of the transitional safeguard would create uncertainty in the marketplace with very serious impact on the well-being of the exporting Member's industry and economy. He urged Members to apply this provision faithfully and to exercise restraint in the application of safeguard measures because, in the long run, such discipline would contribute towards enhancing the effectiveness of the trade-liberalization objective of the ATC by permitting timely integration of the textile sector into GATT.

52. The representative of Canada noted two points. First, of the 34 safeguard actions that had been taken, most were in the first six months of the ATC. Much attention had been directed towards the United States, it had taken 24 safeguard actions in the first six months of 1995, since then it had taken three measures. That was a significant change from the first six months and should be noted by all Members. Second, he pointed to paragraph 179 of the TMB report, which he considered to be an important paragraph to be noted. In addition to the quantitative change in the safeguard actions taken, there had also been a qualitative change. Members now were aware of what the standards were and that had helped particularly in the case of Canada. Canada had not used safeguards under Article 6 as it had not faced the situations and the pressures that would have required it to do so. The transitional safeguard mechanism, however, remained important for Canada because it provided an atmosphere of greater confidence in the integration process. Canada's confidence had, in fact, increased because in the past 12 months the TMB and DSU Panels had provided greater clarity as regards the requirements and standards with respect to the application of Article 6.

53. The representative of Pakistan referred to the comments by Canada regarding the diminishing trend in the number of requests for consultations under Article 6. He acknowledged that the number of requests had declined over time; however, this was not an exercise in numbers and the fundamental point at issue was the impact of such requests on the trade prospects of a developing country. The impact of the invocation of the safeguard included the indirect costs, the social price and the economic price for Members that depended on exports of textile products for a large portion of their exports earnings. Even one safeguard action would have an impact which would remain for some time, even if the measure were to be withdrawn. He requested the Council to look into this aspect of the issue.

54. The representative of India recalled that the provisions of the transitional safeguard mechanism as contained in Article 6 of the ATC had been explained in paragraphs 79 and 80 of the TMB report. He proposed to examine the significance of those provisions in relation to the objectives of the ATC and to consider how the recourse to the safeguard had affected the implementation of the Agreement. He believed that the transitional safeguard was unique in that it was part of a transitional arrangement that, by its own provisions, would terminate when textiles and clothing trade was fully integrated into the multilateral trading system. He observed that the ATC had been built on the foundation of the MFA-inherited quota system and, therefore, did not apply the essential principle of non-discrimination on which GATT and the WTO system were based. In this sense, the ATC was an exception to GATT principles. Within the ATC, the transitional safeguard, was a further departure from GATT, in the sense that its provisions were applicable on a discriminatory basis. Therefore, the transitional safeguard provision of the ATC was an "exception within an exception".

55. He also placed special emphasis on the mandatory provision in the first paragraph of Article 6 which stated that the transitional safeguard should be applied as sparingly as possible, consistently with the provisions of Article 6 and the effective implementation of the integration process under the Agreement. As demonstrated earlier in the review, India did not believe that the integration process under the ATC was being effectively implemented and added to this, one Member had taken safeguard measures in such a way as to further weaken the integration process. The introduction of an exceptionally large number of safeguard measures in the first year of the Agreement had been a manifestation of protectionism. The first stage integration programme of that importing Member had been without any meaning, since it had not integrated a single product under restraint. This was combined with its resort to an indiscriminately large number of transitional safeguard measures, in 26 cases according to the TMB report, which indicated a serious negative impact on the implementation of the ATC.

56. India had been one of the Members against whose textile and clothing exports this importing Member had invoked the transitional safeguard, on three separate cases simultaneously. While accepting that the transitional safeguard was part of the ATC, it was also recognized that the provisions of the transitional safeguard could be invoked only by following its specific provisions. India was not disputing the right of that Member to apply the existing provisions of the ATC; however, in looking at the manner in which the safeguard provisions were applied, it was found that in none of the three cases was this importing Member able to justify and sustain its action as being in accordance with the provisions of the ATC. He pointed to two distinct issues regarding the impact of the indiscriminate use of transitional safeguards. One was the legal issue which had implications for the system, as any recourse to the provisions of the safeguard in the remaining period of the ATC should be in conformity with the disciplines which the ATC itself contained. The second issue was the implication for textiles and clothing trade of such an indiscriminate use of transitional safeguard measures.

57. Looking at the legal and systemic issue, and with reference to the safeguard action against Costa Rica's exports of underwear to the United States which had been considered by a Panel and the Appellate Body, the representative of India suggested that the Council should observe that, given the unique nature of the transitional safeguard, the importing Member invoking the safeguard would have the burden of proving that it had complied with the requirements of Article 6 of the ATC. Secondly, since safeguard actions were exceptional, he proposed that the Council reiterate that its provisions had to be interpreted narrowly and it was, therefore, incumbent on the importing Member to prove that it had respected all the conditions mentioned in Article 6 of the ATC. In this regard, he highlighted that Article 6 of the ATC was perhaps the only provision in the WTO legal framework that permitted Members to impose discriminatory trade measures to protect domestic producers against perfectly legitimate trade. Therefore, the principles applicable to the exceptions in the GATT should apply with even greater force to Article 6 of the ATC. It was also suggested that the Council should endorse that the safeguard provisions could not be interpreted in a manner which would encourage a return to

the practices of the MFA era, especially on matters such as backdating the effective date of restraint measures. It was further suggested that the Council should reiterate the importance of the difference between the concepts of "serious damage" and "actual threat of serious damage", as was clearly set out in the ATC, so that importing Members did not continue to blur this important distinction when considering recourse to these provisions in the future. To assist the Council in making these findings, it was suggested that the review should refer to and take note of the findings and recommendations of the two Panel and Appellate Body Reports (WT/DS24/R, WT/DS24/AB/R, WT/DS33/R and WT/DS33/AB/R) as well as the views expressed by Members in the DSB on these documents. There were enough legal arguments in support of India's views and the very fact that this Council would refer to these reports in its major review would enhance the application of at least some WTO rules and disciplines in the textiles and clothing sector and establish the integral link between this sector and the dispute settlement mechanism of the WTO.

58. Referring to the tables circulated by Colombia, he said that the impact of safeguard measures on textiles and clothing trade was self-evident, as any new restriction would have a negative impact on such trade. The Council should have no hesitation in endorsing this view. In the case of the products being exported by India against which safeguard action had been taken, it was a fact that, although India's position had been upheld by the TMB in one case; the importing Member had rescinded the measure after several months in the second case; and in the third case the Panel had found the importing Member in violation of Articles 2 and 6 of the ATC, the very fact of the introduction of these discriminatory restraints under the guise of the transitional safeguard had resulted in restrictions on exports, which were also restrictions on legitimate trade. The Panel had found that the measure had "nullified and impaired the benefits of India under the WTO Agreement, in particular under the ATC". This was a clear statement, establishing a solid foundation for the Council to come to the conclusion in this review that misuse of transitional safeguard provisions by one importing Member had impaired the rights and affected the benefits accruing to India from the full and faithful implementation of the Agreement.

59. The representative of India also referred to the impact of safeguard action on its exports to the importing Member concerned. The tables circulated by Colombia demonstrated that substantial portions of trade had been affected by the application of safeguard actions. Besides bringing a certain amount of trade under restriction, these actions had also caused disruptive effects for exports to the market of this importing Member by the exporting Members concerned. India's exports of woollen shirts and blouses to this market, which had been a significant growth area before the safeguard action was introduced, were negligible at present. Even the legal victory won by India, therefore, could not restore exports of this product to this market and the end result of the dispute, in trade terms, was at best a "Pyrrhic victory". There was a multiplier effect not only on the producer of the product in question but on India's export earnings, employment and overall prosperity associated with trade liberalization, not to mention the effect on the consumers in the market of the importing Member who was made to suffer on account of such protectionist measures. He considered that the Council should note with concern that up to the end of August 1997, the United States had issued 27 requests for consultations under the provisions of Article 6 of the ATC. While noting that it had been less active since the first half of 1995, nevertheless, the tables circulated by Colombia showed that except for eight bilaterally agreed restraint measures still in force, most of the other actions had been rescinded because the Member could not justify the conformity of its measures with the provisions of the transitional safeguard. Of the eight bilaterally agreed restraint measures, the scrutiny of these measures in terms of their conformity with the provisions of the ATC had resulted in the justification of only one such bilaterally agreed restraint.

60. He considered that India had demonstrated several significant elements under this aspect of the review and he anticipated that the Council would endorse the following findings: first, that the transitional safeguard provision had not been used as sparingly as possible by a major importing Member; second, that the application of the transitional safeguard provision by this importing

Member had not been in conformity with the provisions of Article 6; third, that the large number of safeguard measures introduced by this importing Member had had a disruptive effect on the integration process; fourth, that the introduction of the safeguard measures, even those measures which were rescinded either before or after scrutiny in the WTO, had adversely affected trade liberalization in the textiles and clothing sector; fifth, that the provisions of the transitional safeguard had to be interpreted narrowly; and sixth, that the indiscriminate use of transitional safeguard measures had impaired the balance of rights and obligations of Members both under the ATC and under the WTO Agreements. On the basis of these findings, India expected the Council to consider an appropriate recommendation to the importing Members, based on the Agreement's requirement that the use of the transitional safeguard should be as sparing as possible, and that it should be invoked consistently with the effective implementation of the integration process.

61. The representative of India said that the developing country Members had expected that the textiles and clothing sector would be brought under GATT disciplines and that the discriminatory quota system would disappear fairly quickly. However, the ATC incorporated a provision enabling introduction of new discriminatory quotas and this was why Article 6 was described as an "exception within an exception". Therefore, India considered that the Council should devise ways to ensure that Article 6 was not resorted to in a casual manner and that all WTO Members were conscious of the need to fulfil their obligations to use this provision as sparingly as possible. It was also noted that the Annex to the ATC included all textile and clothing products, including a large number that had not been susceptible for discriminatory safeguard action under the MFA. This situation had arisen because the product coverage of the ATC went far beyond the product coverage of the bilateral agreements negotiated under the MFA. Therefore, it could be argued that the ATC provided for discriminatory safeguard action on a larger number of products than what had been possible under the MFA. On the basis of this consideration also, Members had to ensure that Article 6 was resorted to only when it was absolutely necessary. It should also be borne in mind that safeguard action under Article 6 of the ATC was against "legitimate trade", unlike action against dumped or subsidised products. Although India had perceived the ATC as the beginning of an era of liberalization in textiles and clothing trade, the reality had turned out to be totally different. It was necessary, therefore, to exercise adequate care in taking safeguard action if the perception of the ATC in exporting Members was not to become totally negative. He requested the Council to consider these aspects during the course of this major review.

62. The representative of the United States, referring to the use of the transitional safeguard mechanism, noted that some Members considered that the United States had not been "sparing" in its use. Others had asserted that the two Panel decisions in favour of Costa Rica and India were a sign that the United States has misused this mechanism. He did not consider that either of these assertions was correct. The purpose of Article 6 of the ATC was to address serious damage or actual threat thereof to domestic textile producers during a transition period. In every case where the United States had requested consultations under Article 6, it was believed that damaging conditions existed. In the future, when similar conditions would arise, the United States would not hesitate to exercise its rights under that Article. He did not consider the Panel decisions in favour of Costa Rica and India to constitute a repudiation of the United States' use of Article 6. Both decisions referred to Article 6 actions that were taken immediately after the entry into force of the ATC. Both decisions were based on narrow, procedural grounds relating to the information provided in the market statements provided by the United States at the time of the request for consultations to demonstrate the existence of serious damage or actual threat thereof. He assured Members that the United States had learned from these decisions and was now supplying market statements that met the informational requirements set by these decisions.

63. He said that Members would have noticed the distribution of United States' requests for consultations under Article 6 indicated on page 45 of the TMB report. After making 24 requests for consultations in the first six months of the ATC, the table indicated that the United States had made

two additional requests for consultations over the next two years. For completeness sake, the Council should be aware that the United States had made one additional request for consultations since that table was compiled. That request remained the subject of consultations at the present time. Although not all of these requests had resulted in restraints, of those that had resulted in the imposition of a restraint, some had been rescinded. Of the nine restraints referred to in paragraph 174 of the TMB report that remained in place, eight would expire early next year. The heavy concentration of Article 6 actions in the first months of the ATC was due to two factors; first, a number of requests for consultation that would have been made in 1994 had been delayed because of the impending entry into force of the ATC. Second, the rate of textile import growth into the United States market had reached very high levels in the first part of 1995. Import growth had moderated since then. If in the future, however, if imports were to increase to the extent that they caused or threatened to cause serious damage, the United States would exercise its rights under Article 6.

64. The representative of the United States also referred to statements made by other Members with respect to the question of trade disruption caused by the imposition of Article 6 actions or the threat of such actions. He considered that the case mentioned by Pakistan would be instructive in this respect. Earlier in 1997, the United States had made a request for consultations under Article 6 with respect to part of product category 301. Its exports of this product to the United States, however, had started to decline in 1996 for reasons related to factors in the United States' market. This decline in exports was a central element in the consultations between the United States and Pakistan and the conclusion reached was that the imposition of a restraint was not justified. The question of whether, simply by virtue of the request for consultations having been made, Pakistan's exports to the United States declined did not, in his view, stand up under scrutiny. In response to a subsequent request by Pakistan for clarification as to why the United States would continue with an action when imports were declining, the United States representative said that Pakistan's exports had reached a peak in 1996 and although they had subsequently declined, the 12-month total of exports had continued to be substantially higher than earlier figures. There was also a situation of "data lag" in that there were no more recent figures available; therefore, the magnitude of the decline did not become evident until after the request for consultations had been made.

65. He noted that in respect of safeguard actions taken under Article 6, Members had two forms of protection under the ATC that did not exist in the MFA period. First, under the ATC there were very tight deadlines for the consultation process and the decision whether or not to impose the restraint. Unlike under the MFA, where consultations could go on indefinitely, and *de facto* a restraint could remain in effect over the entire consultation period, under the ATC this was not possible. This tight time deadline meant that it was almost impossible for exporters to run into immediate problems with respect to productions and exports to the United States' market. The second element referred to the date on which a measure could be imposed. Although the United States did not initially read this into the text of the ATC, an Appellate Body decision later clarified that it was not possible to apply a restraint from the date the request for consultations was made. Accordingly, in the case of Pakistan, the United States was not in a position to start applying this new restraint from the date of the request for consultations. It had been pointed out by exporting Members that there was a disadvantage in negotiating when a restraint had already been imposed. This was not the case with Pakistan and would not be the case in any other Article 6 actions that the United States might take. He also recalled a case with India, on product category 440, where the decline in India's exports to the United States of this product had followed a decline both in United States production and in exports from other sources to the United States' market. In his view, the fact that the imports of a particular category had increased or decreased during the consultation process was unrelated in many instances to the question of whether restraints were going to be imposed or not. He also noted that, given the number of new restraints that the United States had been imposing in the years before the ATC came into effect, the behaviour of the United States since then in terms of restraints actually imposed, had been far more moderate.

66. In closing the meeting, the Chairman recalled that the agenda would be kept flexible and the matters under discussion could be reverted to at subsequent meetings. He emphasized that the role of the Council in this review was that mandated by Article 8.11 of the ATC and this must guide the Council's work. The next meeting to continue the review will be held on 7 November 1997.

67. The Council took note of the statements made.