

## Textiles Monitoring Body

### FIFTY-NINTH MEETING OF THE TMB

#### Note by the Chairman

1. The Textiles Monitoring Body met on 18 to 22 October 1999.
2. The TMB authorized its Chairman to provide WTO Members with the following information.

#### **Notification under Article 6.11 of the Agreement on Textiles and Clothing (ATC)**

##### Argentina/Brazil: imports of products of categories 218, 219/220, 224, 313/317 and 613/617/627

3. On 29 July 1999, Argentina requested consultations with Brazil pursuant to Article 6.11 of the ATC, and provided it with factual information, as referred to in Article 6.7. Such information was at the same time communicated to the Chairman of the TMB. Argentina had decided to introduce, with effect from 31 July 1999 and for a duration of three years, a provisional safeguard measure on imports of woven fabrics of cotton and cotton mixtures, consisting of five quotas on imports from Brazil of products of categories 218 (woven cotton and cotton mixtures fabrics of yarns of different colours), 219/220 (duck/special-weave cotton and cotton mixtures fabrics), 224 (pile tufted cotton and cotton mixtures fabrics), 313/317 (sheeting/twill cotton and cotton mixtures fabric) and 613/617/627 (sheeting fabrics/twill and satin/staple-filament fibre combinations of cotton and cotton mixtures). Consultations were held between the two Members, which did not result in a mutual understanding as to whether the situation called for restraint on the imports of the above-mentioned products.

4. On 20 September 1999, Brazil notified to the TMB, pursuant to Article 6.11 of the ATC, that the consultations concerning the transitional safeguards applied by Argentina to imports from Brazil of products of categories 218, 219/220, 224, 313/317, and 613/617/627 had not resulted in agreement. Brazil requested the TMB to examine the matter and make appropriate recommendations, in accordance with Article 6.11 of the ATC.

5. Article 6.11 requires the TMB to "promptly conduct an examination of the matter, and make appropriate recommendations to the Members concerned within 30 days". The TMB, therefore, decided to conduct this examination at its meeting scheduled to start on 18 October 1999, and invited the participation of representatives of both Argentina and Brazil.

6. Article 6.10, which is relevant to the examination of safeguard measures applied under Article 6 without the agreement of the Members concerned, states that "[i]n order to conduct such examination, the TMB shall have available to it the factual data provided to the Chairman of the TMB, referred to in paragraph 7 [of Article 6], as well as any other relevant information provided by the Members concerned".

7. In reply to the TMB's invitation, Argentina and Brazil sent representatives to present their respective cases. The two Members made presentations and provided replies to questions posed by the TMB.

8. The factual information and data submitted by Argentina, referred to above and the statement made by the representative of Argentina, set out, *inter alia*, the following:

- For the purpose of determining damage under Article 6.11 of the ATC, the National Commission for Foreign Trade (CNCE) of Argentina had carried out an investigation to record and verify the trends in the main internal and external variables of all the enterprises which make up the industry producing woven fabrics of cotton and cotton mixtures, with the exception, for methodological reasons, of the denim manufacturing sector which, in view of its size and special nature, was considered to deserve separate analysis. Although the investigation related to the production of woven fabrics, and all the technical reports and calculations had been confined specifically to the investigation of this stage of production, the industry in question included enterprises which manufactured fabrics starting from the fibre processing stage and were equipped with spinning machines, alongside other enterprises whose manufacturing process begins with the yarn. With a view to not receiving comments on the structure and common characteristics of the enterprises which make up the industry investigated, the tariff headings for woven fabrics of pure synthetic fibres, pure artificial fibres, or their mixtures (excluding mixtures with cotton), and knitted fabrics had been excluded from the investigation and hence from the restraints applied. For the purpose of supplementing the official statistics available at sector level, the state of the industry had been investigated using a sampling procedure which involved the main producers of products of this type for the domestic market whose output, in 1998, accounted for 42 per cent of the total volume. It was pointed out that the geographical distribution of the enterprises forming the sample ensured that it did not relate to a particular region or special economic situation. In fact, according to Argentina, the sample was sufficiently representative of the sector as a whole and of each of its constituent categories, on the basis of which it was decided to apply a special transitional safeguard. With a view to dissipating any possible misunderstanding, Argentina confirmed that the factual data provided by it had encompassed 100 per cent of the domestic industry and the sampling procedure had been solely used to verify, rectify or complement the data available;
- Argentina had first examined, in its general considerations, the evolution of certain economic variables, as mentioned below, for the whole industry producing woven fabrics of cotton and cotton mixtures except denim on a calendar-year basis for the period 1995–1998. Output had risen from 1995 to 1997, that trend being interrupted in 1998 which marked the beginning of a decline that was still continuing. The share of output in apparent domestic consumption had fallen from 91 per cent in 1995 to 69 per cent in 1998. Counting only the personnel employed in the weaving stage of the production process, employment had increased by 2 per cent between 1995 and 1997, productivity rising by 10.5 per cent. Employment had fallen by 11 per cent in 1998, reflecting the declining trend in output, which, according to Argentina, determined a slight downturn in productivity. During the period investigated, the enterprises which make up the industry had pursued investment policies that tended to increase productivity rather than to expand capacity, which had remained more or less steady throughout the period. These enterprises had followed a highly restrictive wages policy, the average wage remaining more or less static while the consumer price indices tended to stabilise. This wages policy had been based on a sharp fall in the average prices of the products manufactured by the industry. In 1998, in parallel with cutbacks in employment, average industrial wages had begun to decline and were still declining. Since 1995, imports of the fabrics produced by the industry had steadily risen, taking up an increasing percentage of the apparent demand. Although up to 1997 the volume of production had not been affected, since 1998 the increase in

imports had run parallel with a fall in the absolute value of the domestic output. During the same period, exports had been declining significantly, which reflected the industry's difficulties in competing, given the generalized process of sectoral price deflation following the series of devaluations which began in mid-1997 in South-East Asia. In the face of this price deflation and the growing pressure from imports, the industry's average domestic prices had been falling steadily in line with the world cycle, especially since 1997, having contracted by more than 15 per cent in the last two years. This trend was still continuing. In volume terms, domestic sales had expanded between 1995 and 1997, after which a sharp deterioration had set in. This situation, together with the above-mentioned fall in prices, had resulted in the value of domestic sales, which had remained steady or even increased slightly during the last three years, recording a fall of 22 per cent in 1998, an effect which was still intensifying. This declining trend in the level of domestic sales and exports had led to a sustained increase in end-product inventory levels which, in 1998, had reached high absolute values equivalent to almost three months' output. Indicators for profitability, return on investment and indebtedness being enterprise-specific and difficult to assign to an industrial sector in particular, the average economic performance of the enterprises surveyed had been taken as being representative of the sectoral situation. Enterprises had maintained very low or negative operating margins on sales during the period investigated, special concern being aroused by the indicator for 1998 which showed enterprises becoming unprofitable, a trend that was still continuing or intensifying. This situation was also reflected in the rate of return on net assets which had been falling to levels incompatible with continued business activity, including negative values indicative of disinvestment. The implications of these indicators had been confirmed by the industry's level of indebtedness which had risen steadily throughout the period in question due not only to investment but also to very low or negative profitability. Argentina's analysis of the variables, both collectively and individually, showed clearly that the industry in question had suffered damage during the period under investigation. It also showed that the damage was continuing and, given the time that had elapsed, had to be regarded not as a cyclic phenomenon but rather as a continuous and sustained trend which, if remedial action was not taken, would cause serious damage to the domestic industry. The trend in imports, their increasing share of apparent consumption and their falling price level were the key to the difficulties confronting the industry. Argentina's analysis showed that "82 per cent of sectoral imports [came] from three countries, Brazil, China and Pakistan, in respect of which [...] measures under Article 6.11 of the ATC [were] being adopted";

- In addition to this overall examination of certain economic variables for the whole industry producing woven fabrics of cotton and cotton mixtures, Argentina had analysed in detail, with respect to each of the individual product categories subject to a provisional safeguard measure, the trends of imports and its impact on the state of the domestic industry producing like and/or directly competitive products. With respect to products of **category 218** (woven cotton and cotton mixtures fabrics of yarns of different colours), the trend in imports showed that in 1998 imports were 71 per cent higher than in 1995. During the intervening periods there had been a significant and continuously rising annual trend. As a result of the levels achieved by imports, output, domestic sales, domestic prices, capacity utilization, employment and wages had been falling, while inventories and productivity were raising. The excessive increase in imports during the period under investigation had caused serious damage to the domestic industry manufacturing category 218 goods, none of which could be attributed to technological innovations or changes in consumer preferences, since there had been no significant changes in market trends. With

respect to products of **category 219/220** (duck/special-weave cotton and cotton mixtures fabrics) imports accounted for a significant proportion of apparent consumption which in the last 12 months to April 1999 amounted to 32 per cent. During the same period imports had risen by 3.3 per cent as compared with 1998. As a result of the levels achieved by imports, output, domestic sales, domestic prices, capacity utilization, the number of employees and wages had been declining, whereas inventories and productivity had been rising. The excessive volume of imports during the period under review had caused damage to the domestic industry manufacturing category 219-220 products, none of which could be attributed to technological innovations or changes in consumer preferences, since there had been no significant changes in market trends. The sector had continued to make substantial investments in order to maintain its competitiveness (see the general considerations above regarding the industry producing woven fabrics of cotton and cotton mixtures except denim) and, at the same time, because of the nature of the products in this category, there had been no changes in consumer preference. Imports of products of **category 224** (pile tufted cotton and cotton mixtures fabrics) were 107 per cent higher in 1998 than in 1995. During the intervening periods there had been a significant and continuously rising annual trend in imports, with a small downturn starting in 1998. For the 12 months ending in April 1999 there had been a sharp fall of 10.3 per cent in apparent domestic consumption, which had led to a decline in imports and a fall in domestic output. Nevertheless, imports had largely held on to their share of apparent consumption at levels of around 56 per cent. As a result of imports, between 1995 and the year ending April 1999, the domestic producers had lost 28 per cent of their share of apparent consumption, while during the same period the ratio of imports to domestic production had increased by 102 per cent. During all the intervening periods this trend had been steady and increasing, with a slight downturn during the last 12 months as a result of a decline in domestic demand. As a result of the level achieved by imports, output, domestic sales, domestic prices, capacity utilization, employment and wages had been falling while, at the same time, inventories and productivity had been rising. The sector had continued to make substantial investments in order to maintain its competitiveness (see the general considerations above regarding the industry producing woven fabrics of cotton and cotton mixtures except denim) and, at the same time, because of the nature of the products in this category, there had been no changes in consumer preferences. The excessive increase in imports during the period under investigation has caused serious damage to the domestic industry manufacturing category 224 goods, none of which could be attributed to technological innovations or changes in consumer preferences, since there had been no significant changes in market trends. As regards products of **category 313/317** (sheeting/twill cotton and cotton mixtures fabric), the trend showed that imports were 144 per cent higher in 1998 than in 1995. During the intervening periods there had been a significant and continuously rising annual trend, with a slight downturn, starting in 1998. For the 12 months ending in April 1999, there had been a sharp fall of 5.8 per cent in apparent domestic consumption which, given the 1.4 per cent increase in imports as compared to the calendar year 1998, had led to a significant decline of 9.3 per cent in domestic output. Throughout the period up to 1998, imports had maintained their share of apparent consumption at levels of around 27 per cent, a figure which had risen to 29 per cent in the last 12 months to April 1999. As result of the levels achieved by imports, output, domestic sales, domestic prices, capacity utilization, employment and wages had been falling, while inventories and productivity were increasing. The sector had continued to make substantial investments in order to maintain its competitiveness (see the general considerations above regarding the industry producing woven fabrics of cotton and cotton mixtures except denim) and, at the same time, because of the nature

of the products in this category, there had been no changes in consumer preferences. However, as a result of imports, between 1995 and the year ending April 1999, the domestic producers had lost 22 per cent of their share of apparent consumption, while during the same period the ratio of imports to domestic production had increased by 133 per cent. In every period, both intermediate and final, this trend had been steady and increasing, which had intensified the effect on domestic output of the above-mentioned fall in domestic demand. The excessive increase in imports during the period under investigation has caused serious damage to the domestic industry manufacturing category 313-317 goods, none of which could be attributed to technological innovations or changes in consumer preferences, since there have been no significant changes in market trends. With respect to the imports of products of **category 613/617/627** (sheeting fabrics/twill and satin/staple-filament fibre combinations of cotton and cotton mixtures), the trend showed that imports had been 203 per cent higher in 1998 than in 1995. During the intervening periods there had been a significant and continuously rising annual trend which intensified in the 12 months ending April 1999. In the 12 months ending in April 1999, a fall of 5.2 per cent in apparent consumption had occurred as compared to the calendar year 1998. This had led to a reduction in domestic output, although it had had no effect on imports, which had significantly increased their share of apparent consumption to the 50 per cent level. As result of the levels achieved by imports, output, domestic sales and domestic prices, capacity utilization, employment and wages had been falling, while inventories as well as productivity had increased. The sector had continued to make substantial investments in order to maintain its competitiveness (see the general considerations above regarding the industry producing woven fabrics of cotton and cotton mixtures except denim) and, at the same time, because of the nature of the products in this category, there had been no changes in consumer preferences. As a result of imports, between 1995 and the year ending April 1999 the domestic producers had lost 38 per cent of their share of apparent consumption, while during the same period the ratio of imports to domestic production had increased by 300 per cent so that now imports and domestic output were almost equal in volume terms (domestic output 9,646 tons, imports 9,673 tons). During all the intervening periods this trend had been steady and increasing. The excessive increase in imports during the period under investigation had caused serious damage to the domestic industry manufacturing category 613-617-627 goods, none of which could be attributed to technological innovations or changes in consumer preferences, since there had been no significant changes in market trends.

9. The representative of Brazil stated, *inter alia*, that since Article 6.1 states that "[t]he transitional safeguard should be applied as sparingly as possible, consistently with the provisions of [... Article 6]", the examination of measures under Article 6 must be undertaken strictly. In this regard, the examination of the criteria contained in Article 6.2 that "on the basis of a determination by a Member, it is demonstrated that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products" should be viewed essentially with respect to the data referring to the representative period indicated in Article 6.8. This was particularly the case when a transitional safeguard was being implemented under the provisions of Article 6.11, which requires the existence of "highly unusual and critical circumstances". In this respect, the data submitted by Argentina presented some initial difficulties due to their lack of comparability, since import data had been provided for the period referred to in Article 6.8 but not for the corresponding previous period. In addition, such data had been provided with respect to each individual category but not for the total imports of all the categories taken together, for which only calendar-year data had been provided. Imports of the five categories taken together had increased by 2.2 per cent between 1997 and 1998, and decreased by 0.4 per cent between 1998 and the period May 1998/April 1999.

Thus, the demonstration that there had been increased imports in "such increased quantities", or of the existence of "highly unusual and critical circumstances", had not been made. According to Brazil, Argentina attributed the decline in domestic output of 10.3 per cent between 1997 and 1998, registered in the textile industry producing plain woven fabric of cotton and cotton mixtures except denim, to the negative impact of imports, whereas a longer term view showed that between 1995 and 1997 production had increased at a time when imports were growing, and that during the period when domestic production had declined imports had practically stagnated. This led to the conclusion that there was no causal relationship between the level of imports and domestic production. Other data seemed to indicate that this drop in production was essentially related to the general recession that had been experienced by the whole economy of Argentina since late 1997. Brazil was of the view, therefore, that even in broad terms applying to all the categories under review the transitional safeguard measures applied by Argentina were not justified under Article 6 of the ATC and should be rescinded.

10. Notwithstanding this, Brazil provided an explanation on a category-by-category basis as to the reasons why it believed that the measures were not justified under Article 6. In doing so, Brazil limited its analysis to the most recent information, in particular since this was a situation where Article 6.11 had been resorted to. In the case of products of **category 218**, the volume of imports had declined by 15.3 per cent between 1997 and 1998. Data for the most recent period (May 1998/April 1999) showed an increase of 0.4 per cent if compared to the calendar year 1998, hardly significant to endorse the imposition of a safeguard pursuant to Article 6, much less pursuant to Article 6.11. Furthermore, there was no possible causal relationship between the state of the domestic industry and imports. Domestic output had remained stable between 1995 and 1997 when there had been an increase in imports. The drop in output in 1998 had taken place as imports declined. The statement of continued investment to retain competitiveness was contradicted by the continuous decline in installed capacity. The evolution of domestic prices was similar to that of prices for the Argentinean industry in general. With respect to products of **category 219/220**, Brazil noted the decline of 50 per cent in the volume of imports between 1997 and 1998. The increase in imports of 3.3 per cent between the calendar year 1998 and the period May 1998/April 1999 could not be taken as a reversal of the decrease experienced in 1998, and the trend in imports did not endorse the imposition of safeguard measures, much less so of an emergency action under Article 6.11. No causal relationship between the state of the domestic industry and the volume of imports was identifiable, in particular since there had been a constant increase in domestic production from 1995 to 1998, and since both domestic sales and capacity utilization had followed a similar trend. As regards products of **category 224**, Brazil noted a 1.8 per cent decline in the volume of imports between 1997 and 1998, and a decline of 11.1 per cent if the period May 1998/April 1999 were to be compared to the calendar year 1998. No causal relationship between the state of the domestic industry and the volume of imports was identifiable. The ratio of imports to domestic apparent consumption had declined by 0.9 per cent between the period May 1998/April 1999 and the calendar year 1998, while that of domestic output to domestic apparent consumption had grown by 1.1 per cent. Furthermore, the ratio of imports as a proportion of output had declined by 2 per cent during the same period. As for products of **category 313/317**, Brazil had noted that there had been a decline in the volume of imports of 4.57 per cent between 1997 and 1998, and an insignificant increase of 1.4 per cent if one compared calendar year 1998 with the period May 1998/April 1999. No causal relationship between the state of the domestic industry and the volume of imports was identifiable. Domestic production encompassed 83 per cent of domestic apparent consumption during the period referred to in Article 6.8, and one could ask how a decrease in imports of 535 tons in 1998 and an increase of 92 tons in the period May 1998/April 1999 could entail a reduction of the magnitude of more than 2000 tons in domestic output that had occurred during each of those two periods. With respect to products of **category 613/617/627**, Brazil noted that there had been an increase in the volume of imports of 0.1 per cent between the calendar year 1998 and the period May 1998/April 1999. This, in the view of Brazil, did not indicate the existence of "highly unusual and critical circumstances" that allow a Member to forgo the preliminary stage of bilateral consultations. Similarly, as with respect to the

other four categories, the situation of the industry producing products of category 613/617/627 would seem to be explained by the general situation of the Argentinean economy and not by imports.

### **Preliminary observations**

11. Before turning to the examination of the transitional safeguard measures category by category, the TMB noted that in the introductory part of the information submitted by Argentina as referred to in Article 6.7, containing the general considerations applicable to the sector comprised of the five categories that were subject to the safeguard measure, specific information had been provided for the period 1995-1998, i.e. for four calendar years. It was further noted that in the detailed category-specific information, data had been presented for the same period as well as for the period May 1998/April 1999.

12. The TMB recalled that the relevant provisions of the ATC (Article 6.7) required, *inter alia*, that "[i]n respect of requests [for consultations] made under this paragraph, the information shall be related, as closely as possible, to identifiable segments of production and to the reference period set out in paragraph 8" of Article 6. In the particular cases referred to the TMB and subject to the present review, this reference period, in accordance with Article 6.8, corresponded to the period May 1998/April 1999, for which category-specific information had been provided by Argentina. It had to be observed, however, that in the factual information given by Argentina developments of this most recent period could not be compared to the state of the domestic industry as reflected in the different variables during a preceding corresponding period, i.e. during May 1997/April 1998, since all other data had been provided on a calendar-year basis. Though Argentina gave indications (expressed in terms of percentages) regarding "changes over 12 months", these indications could not be considered to provide a reliable basis, as they compared data relating to May 1998/April 1999 to those reported for January/December 1998. Therefore, between the two data series compared there had been an overlap of eight months. Reliable indications cannot be obtained but by comparing data for identical time-periods. Though Argentina had explained that there had not been indications referring to the existence of seasonal factors, the TMB was of the view that the availability of data for the calendar-year 1998 and for the period May 1998/April 1999 could give an indication for comparing trends between January-April 1998 and the same period in 1999, but did not allow for more far-reaching comparisons.

13. The TMB also noted that providing data for a relatively longer time-period, like in the present cases for 1995-1998, could be useful for having a better understanding of the trends characterising developments that occurred to the domestic industry. Such an approach was particularly helpful in identifying whether certain developments had reflected lasting phenomena or rather had been of a temporary nature. At the same time, the TMB reiterated that in examining and assessing the determination of serious damage, or actual threat thereof, caused to the domestic industry producing like and/or directly competitive products by increased quantities of imports, decisive guidance had to be provided by the developments which had occurred in the most recent period, while data related to the longer time-period provided supplementary information that could support the justification of the determination made. The evidence that developments in the most recent period should have a decisive role in such a determination was, in the view of the TMB, supported by the time-frame referred to in Articles 6.7 and 6.8, by the requirements defined in Article 6.2 that in a determination it has to be demonstrated that a particular product "is being imported" in increased quantities, and by the period of validity of a determination of serious damage or actual threat thereof for the purpose of invoking safeguard as stated in Article 6.5. Also, the object and the nature of the ATC (constituting an agreement for a transition period) as well as Article 6.12 (allowing for the maintenance of a transitional safeguard measure for up to three years without extension) confirmed that a determination of serious damage, in the sense of Article 6, could not be based on developments that had affected the domestic industry years before the actual determination was being made.

### Examination category by category

#### Category 218 (woven cotton and cotton mixtures fabrics of yarns of different colours)

14. The TMB noted that Argentina had presented the following data regarding developments in total imports for the period 1995 – May 1998/April 1999:

Year	Imports	Base 1995=100	Previous year=100 <sup>1</sup>
1995	867,919	100	100
1996	1,641,156	189	189
1997	1,745,013	201	106
1998	1,480,948	171	85
May 1998/April 1999	1,487,948	171	-

The TMB observed that imports in 1998 had decreased by 15 per cent in volume terms compared to 1997, and that this trend had not been reversed during the most recent period for which data were available. The TMB also observed that the evolution of imports and output from 1996 to 1998 (both had increased in 1997 and decreased in 1998) did not point to the direction of the existence of a causal link between a possible damage to the industry and the evolution of imports.

15. In view of the considerations stated above, the TMB concluded that it had not been demonstrated that products of category 218 were being imported into Argentina at the time Argentina had decided to introduce a safeguard measure pursuant to Article 6.11 in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. Therefore, the TMB recommended that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil.

#### Categories 219/220 (duck/special-weave cotton and cotton mixtures fabrics)

16. The TMB noted that regarding imports from all sources Argentina had provided the following data in the factual information submitted pursuant to Article 6.7:

Year	Imports	Base 1995=100
1995	500,152	100
1996	773,996	155
1997	747,102	149
1998	373,632	75
May 1998/April 1999	385,858	77

17. On the basis of the above data, the TMB observed that imports in 1998 had decreased by about 50 per cent compared to 1997. While the data related to May 1998/April 1999 could not reliably be compared to those for the calendar year 1998, imports during this most recent period did not show an important increase. As to the trends for the previous years, though the increase from 1995 to 1996 had been sizeable, imports had started to decrease in 1997. The TMB concluded,

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<sup>1</sup> Data in this column were calculated by the TMB.



therefore, that it had not been demonstrated that products of category 219/220 were being imported into Argentina at the time Argentina had decided to introduce a safeguard measure pursuant to Article 6.11 in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. The TMB recommended, therefore, that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil.

Category 224 (pile tufted cotton and cotton mixtures fabrics)

18. The TMB noted that while total imports of the products of category 224 had increased by 54 per cent from 1995 to 1996, and by a further 36.5 per cent from 1996 to 1997, they had decreased by 1.8 per cent in 1998 compared to 1997. While the data related to May 1998/April 1999 could not reliably be compared to those for the calendar year 1998, imports during this most recent period did show a further decrease.

19. Against this background, the TMB noted that in those years when imports had increased significantly (i.e. 1996 and 1997), output had also increased (respectively, by 10 and 3 per cent). In 1998, output had decreased by 10.4 per cent, and imports had also declined. Although the market share of imports and inventories had continuously increased and domestic prices decreased, the information at hand, in particular developments in output and in the apparent consumption did not support a conclusion according to which a causal link between the situation experienced by the industry at the time Argentina had introduced the safeguard measure and the evolution of imports could be established. In the view of the TMB, the recent developments in the domestic industry could rather be the result of business decisions taken by the industry, like the shifting of production to other lines of products, or of structural problems or broader macroeconomic developments such as a contraction of the economy resulting from a recession.

20. In view of the considerations stated above, the TMB concluded that it had not been demonstrated that products of category 224 were being imported into Argentina at the time Argentina had decided to introduce a safeguard measure pursuant to Article 6.11 in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. Therefore, the TMB recommended that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil.

Category 313/317 (sheeting/twill cotton and cotton mixtures fabric)

21. The TMB noted that following a period of significant increase (1996/1995: 100 per cent; 1997/1996: 27.7 per cent) imports had decreased by 4.6 per cent in 1998, compared to 1997. The TMB also noted that Argentina had, in addition, provided data for imports for the period May 1998/April 1999 which showed that imports were, during this 12-month period, at a level 1.4 per cent higher than that of the level of imports for the calendar year 1998.

22. Against this background, the Body observed that domestic production had varied in parallel with the evolution of domestic demand: it had increased in 1996 and 1997 (respectively, by 22 and 3 per cent), and fallen (by 10 per cent) in 1998. These trends had paralleled the evolution of imports. Production capacity had increased by 13 per cent in 1996, and had remained at the same level thereafter. Capacity utilization had fallen in 1998, below the 1995 rate, after an upward trend from 1995 to 1997. Employment had increased significantly from 1995 to 1996, and decreased in 1997 and 1998, reaching a level higher, however, than that of 1995. Average productivity, on the other hand, had increased throughout the period 1995-1998 (though the dynamics of this increase had slowed down in 1998). End-product inventories had increased by 57 per cent from 1995 to 1998, while average domestic prices had decreased by about 11 per cent.

23. Overall, in the view of the TMB, though some variables, in particular output, domestic sales, inventories and domestic prices, reflected unfavourable developments and could point to a direction of an industry being seriously damaged, others seemed to indicate the possibility of the existence of structural problems or of the impact of a recession.

24. In this context, the TMB observed that the imports of the products of category 313/317 had decreased in 1998 as compared to 1997, the period for which directly comparable data were available, closest to that when Argentina had decided to introduce a safeguard measure on imports of the products of category 313/317 from Brazil. The TMB also noted that the data provided by Argentina for the period May 1998 to April 1999 showed that the level of imports reached for that 12-month period was 1.4 per cent higher than that of the calendar year 1998. In this regard, the TMB observed that the data for the two periods could not be directly compared, and that, furthermore, it was not in a position to assess whether this latest evolution relating to the period January-April 1999, indicated a lasting trend or was of a temporary nature.

25. In view of the considerations stated above, the TMB concluded that it had not been demonstrated that products of category 313/317 were being imported into Argentina at the time Argentina had decided to introduce a safeguard measure pursuant to Article 6.11 in such increased quantities as to cause serious damage to the domestic industry producing like and/or directly competitive products. The TMB recommended, therefore, that Argentina rescind the transitional safeguard measure introduced on imports of these products originating in Brazil.

Category 613/617/627 (sheeting fabrics/twill and satin/staple-filament fibre combinations of cotton and cotton mixtures)

26. The TMB noted that in the view of Argentina, as reflected in the information submitted pursuant to Article 6.7, as a result of excessive imports between 1995 and the year-ending in April 1999, the domestic producers had lost an important share of apparent consumption, while during the same period the ratio of imports to domestic production had increased by 300 per cent. Though the sector including, among others, category 613/617/627 had continued to make substantial investments in order to maintain competitiveness, the excessive increase in imports during the period under investigation had caused serious damage to the domestic industry manufacturing goods pertaining to this category, and this damage could not be attributed to technological innovation or changes in consumer preferences.

27. The TMB observed that in 1998 total imports of products of category 613/617/627 had increased by 17.4 per cent compared to 1997. Though data provided for May 1998/April 1999 could not be compared due to the lack of information for the preceding corresponding period, they indicated that in the period of January/April 1999 imports had remained at the high level already achieved. Regarding trends, it could be observed that the rate of increase from 1996 to 1997 amounted to 63.4 per cent, while the corresponding figure for 1996/1995 was 58.0 per cent. Therefore, there was an increase in the quantity of total imports during the period for which comparable data had been provided and this trend had been continuous since 1995.

28. In view of the above, the TMB proceeded to the examination of the determination of serious damage resulting from increased quantities of total imports made by Argentina. First, the TMB had to address the possible effect of those increased imports on the state of the particular industry as reflected in changes in the economic variables listed in Article 6.3 and in a few other indicators reported by Argentina.

29. Output fell by 10 per cent in 1998 compared to 1997 and this trend continued in early 1999. While output also decreased by about 7 per cent from 1995 to 1996, it increased by 2.5 per cent from 1996 to 1997. It could be observed that this increase in 1997 had been coupled with a more significant increase in the volume of imports. However, the overall trend regarding output during the

period investigated was one of a decline which could point to difficulties the industry was experiencing. In parallel with this trend, domestic sales of the local production also decreased (in 1998 by 13.1 per cent compared to 1997; the corresponding figures for 1997/1996 and 1996/1995 were, respectively, 5.3 and 17.4 per cent). It could also be observed that the ratio of domestic sales to domestic output showed a continuously declining trend: 60.9 per cent in 1995, 54 per cent in 1996, 50 per cent in 1997 and 48.8 per cent in 1998. End-product inventories showed an increasing trend since 1996 (it increased by 11 per cent in 1997 and by a further 11.4 per cent in 1998, compared to the respective previous years). In 1998 inventories represented 22 per cent of the total output, which could have had an effect on the financial costs of the domestic producers. The high level of inventories was an indication of problems, perhaps also of a structural nature. The decline in output, domestic sales and the increase in inventories was accompanied by a significant increase in apparent consumption from 1996 to 1997 (by 20.6 per cent), followed by a mere 0.4 per cent increase from 1997 to 1998 (the significant increase achieved in 1997 explained why output and imports grew in parallel during that period). It could be observed that though exports fluctuated during the period investigated, their volume and share compared to the total output (less than 1 per cent) indicated that exports practically had no real effect on the state of and development in the domestic industry. The share of imports in the apparent consumption showed a relatively sharply increasing trend: about 20 per cent in 1995, 30 per cent in 1996, 41 per cent in 1997, 48 per cent in 1998 and 50 per cent in the period May 1998/April 1999. The significant drop of the market share held by the domestic industry could be a sign pointing to serious damage, but could also indicate, for example, a shift of the integrated industry to more profitable lines of production.

30. The perceived problems as noted above could be, at least in part, an explanation why the domestic industry tried to adjust itself by also cutting back the production capacity (by 0.2 per cent in 1998, 2.9 per cent in 1997 and 8.6 per cent in 1996). Also as a result, capacity utilization remained relatively stable during the period 1995-1996 (71 per cent in 1995, 72 per cent in 1996). In parallel with output, capacity utilization increased to 76 per cent in 1997, but this was followed by a 7 percentage point decrease to 69 per cent in 1998. In any case, the rate of capacity utilization would have been even lower if the installed capacity had not been decreased. Developments related to the production capacity and its rate of utilization could point to the effect of increased competition by imports or to problems of a structural nature. The ratio of own consumption of the industry to total output had remained relatively stable during the period 1996 to 1998. While in 1995 this ratio was 36.6 per cent, it increased to 46.4 per cent in 1996 and amounted to 47.6 per cent in both 1997 and 1998. Slightly less than half of the total output had been used by the producers themselves for further processing, and during the last period when domestic output decreased, the producers' own consumption also decreased by approximately the same rate. This development could be an indication of a reduced demand for the end-products for which the goods covered by categories 613/617/627 constituted an input, and could perhaps be motivated by either a shift in the production lines or by a more general contraction of the internal demand in the Argentinean market, or simply by the industry's reliance on cheaper input for the production of downstream products.

31. Employment (the number of persons employed) declined by 11.3 per cent in 1998; 1.9 per cent in 1997 and 12.3 per cent in 1996. This trend which seemed to confirm the evolution of output and productivity, could indicate structural problems and could also be a reflection of adjustment efforts. Average productivity increased throughout the period 1995 to 1998, usually a sign of health of the respective industry, but the relatively stable level in 1997 and in 1998 did not provide a meaningful indication for the purpose of the TMB's examination. The same applied to data related to wages.

32. Domestic prices declined throughout the period investigated: by 4.4 per cent in 1996; 10.8 per cent in 1997; 12 per cent in 1998. Though this could be attributed in part to the increased productivity, very likely the pressure from imports and their price levels played a preponderant role,

forcing domestic producers, as explained by Argentina, to reduce profit margins or in some cases to sell at loss.

33. The information regarding investments (which could not be attributed to the specific product categories, but was related to the overall sector) seemed to confirm that the primary objective had been to increase productivity rather than to expand production capacity. As to profits, the indications given were enterprise-specific and, therefore, could not provide meaningful guidance in the consideration of the case at hand.

34. In turning to the overall assessment of the state of the domestic industry, as reflected in changes in the different economic variables and as described in the previous paragraphs, the TMB recognized that the industry producing products of category 613/617/627 had been affected by unfavourable developments, and that the difficulties experienced did not seem to be over.

35. It could be argued that the data related to output, sales, imports and prices pointed to the direction of serious damage caused by increased quantities of imports, and other indicators either confirmed or did not contradict such a possible conclusion. Following this reasoning, the continuous and important increase of the volume of total imports, coupled with a price level below average domestic prices, had exercised an important pressure on, and caused difficulties to, the domestic producers of like and/or directly competitive products. Domestic output had fallen during the most recent period; domestic sales of the production had shown a declining trend both in absolute terms and relative to the output; inventories had increased and, as a result of these developments the market share held by imports had increased significantly. The domestic producers had tried to adjust to these circumstances, in particular by cutting back the production capacity and also perhaps by making investments. As a result, there had also been some positive developments, such as the increase in the average productivity. However, these efforts did not seem to be sufficient to halt the negative trends affecting the domestic producers.

36. It could also be argued that the difficulties experienced by the industry had primarily been of a structural nature and that the trends in imports had simply reflected, as a symptom, the basic roots, i.e. the structural problem. Efforts had been made to adjust, *inter alia*, through reducing production capacity, and though these measures had had some favourable impact, they had not been sufficient as yet to redress the situation.

37. Similarly, it could be argued that business decisions taken by the integrated industry could also have contributed to the trends characterising the overall state of the industry. Despite the changes in the level of output, domestic producers' own consumption had remained relatively stable in relation to the total output. This could point to the possibility of shifting to more profitable production lines, and also to reduced demand of further processed products for which products of category 613/617/627 had been an input. Also, the increased reliance on less expensive inputs could not be excluded, as part of a business strategy.

38. There could be a reading according to which the main reasons for the state of the domestic industry had to be sought in broader macroeconomic developments such as a general contraction of the economy resulting from a recession.

39. In reflecting on the possible explanation of the causes of the problems identified as affecting the domestic producers of products of category 613/617/627, the TMB reached at this stage the preliminary conclusion that such difficulties could arise from multiple reasons having a mutually reinforcing effect, as described in paragraphs 35 to 38 above. Concerns were expressed about the lack of possible evidence and information at the Body's disposal that would enable it to reach a definitive conclusion on whether imports were the primary reason for the industry's difficulties. The TMB did not make a final determination as to whether increased imports of products of category 613/617/627 had caused serious damage to the domestic industry producing like and/or directly competitive

products. Notwithstanding that fact, keeping also in mind that the transitional safeguard measure had been implemented as from 31 July 1999 and that the TMB had to make appropriate recommendations to the Members concerned, the Body noted that imports by Argentina of products of category 613/617/627 originating in Brazil had not increased sharply and substantially during the period referred to in Article 6.8 (imports from Brazil had actually decreased by 20.8 per cent in 1998 compared to 1997, and this declining trend seemed to continue during the period January-April 1999). The TMB recommended, therefore, that Argentina rescind the safeguard measure introduced against imports of products of this category originating in Brazil.

Recourse by Argentina to the provisions of Article 6.11

40. The TMB noted that Argentina had invoked the provisions of Article 6.11 which provided that "[i]n highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10 [of Article 6] may be taken provisionally on the condition that the request for consultations and notification to the TMB shall be effected within no more than five working days after taking the action. In the case that consultations do not produce agreement, the TMB shall be notified at the conclusion of consultations, but in any case no later than 60 days from the date of the implementation of the action."

41. The TMB noted that the procedural requirements defined in Article 6.11 had been met, since Argentina had requested consultations with Brazil and had submitted the relevant notification to the TMB two working days prior to the day the safeguard measures had taken effect. As to the substantive requirements of Article 6.11, i.e. the nature of the circumstances in which these provisions had been invoked, the TMB observed that the resolution introducing the safeguard measures stated, *inter alia*, the following:

"The National Commission for Foreign Trade, in its Directive No. 507 of 14 April 1999, has determined that, in the light of the investigation carried out, the domestic industry manufacturing woven fabrics of cotton and cotton mixtures is suffering serious damage and is exposed to an actual threat of additional serious damage caused by imports originating in BRAZIL and, moreover, that the unusual and critical circumstances mentioned in Article 6.11 of the Agreement on Textiles and Clothing (ATC) now exist".

42. The TMB observed that the conclusions of the introductory part of the written factual information provided by Argentina, containing "general considerations concerning the state of the domestic industry manufacturing woven fabrics of cotton and cotton mixtures ..." contained, *inter alia*, the following statement:

"Our analysis of the variables, collectively and individually, clearly shows that the industry in question has suffered damage during the period under investigation. It also shows that the damage is continuing and given the time that has elapsed must be regarded not as a cyclic phenomenon but rather as a continuous and sustained trend which, if remedial action is not taken, will cause serious damage to the domestic industry".

43. The Body observed also that, in support of the statement of the continuing damage, in analysing the industry variables at the sectoral level, the information referred to the "still continuing" adverse trends affecting output, wages bill and average wages, domestic prices and domestic sales. It was noted that the representative of Argentina, in his presentation to the TMB, had made reference to the highly unusual and critical circumstances. However, apart from references to continuing damage, nowhere did the information given by Argentina provide an analysis of the highly unusual and critical circumstances that would have warranted an action pursuant to Article 6.11. The TMB reiterated its view, expressed earlier, that in cases where the provisions of Article 6.11 were invoked the expectation was that the elements envisaged in Articles 6.2, 6.3 and 6.4 would indicate as unambiguously as possible the highly unusual and critical nature of the circumstances. The TMB was

of the view that unless such circumstances were met any action taken under Article 6 should be preceded by consultations between the parties.

44. In the light of the conclusions reached with respect to the specific categories subject to safeguard and the above observations the TMB noted that the recourse by Argentina to the provisions of Article 6.11 had not been appropriate.

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45. The sixtieth meeting of the TMB is scheduled for 10 to 12 November 1999.

46. The full report of the fifty-ninth meeting will be circulated at a later stage.

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