

## Textiles Monitoring Body

### REPORT OF THE ONE HUNDRED AND SEVENTH MEETING

1. The Textiles Monitoring Body held its one hundred and seventh meeting on 9 February 2004.
2. Present at this meeting were the following members and/or alternates: Mr. Crippa/Ms. Miranda; Messrs. Farahat/Dalela; Ms. Huber; Messrs. Ivan Lee; Samosir; Seppey; Sorensen; Tagliani; Yoshikawa; Ms. Zhang/Mr. Khan/Ms. Lu.
3. The TMB adopted the report of its one hundred and sixth meeting (G/TMB/R/105).

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

4. The TMB received a communication from the United States following the Body's invitation, contained in the report of its one hundred and fourth meeting, for the United States to reconsider its position with respect to the implementation of the growth-on-growth provisions of the ATC to the quantitative restrictions maintained on imports from the Former Yugoslav Republic of Macedonia (FYROM) and to implement the full 27 per cent increase in the respective growth rates applicable to Stage 3 also for the year 2003.<sup>1</sup>

5. In its communication, the United States stated the following with respect to the conclusions reached by the TMB:

"The US has carefully reviewed the TMB's finding on this matter and has concluded that it cannot agree with the TMB's reasoning. The US used the same methodology for FYROM as was used to calculate accelerated growth for China after its WTO accession. [The United States] continues to believe that this is the most appropriate methodology to use."

6. The TMB recalled that at its one hundred and first meeting it had begun its examination of the notification received pursuant to Article 2.1 from the United States following the accession of FYROM to the WTO and had decided to seek clarifications from the United States, *inter alia*, on the manner in which the growth-on-growth provisions foreseen in Article 2.14 and also referred to in the accession instruments of the FYROM, had been implemented with a view to providing the increase in the respective growth rates of the restrictions maintained.<sup>2</sup> At its subsequent meeting, the TMB observed with concern that it had not yet received the clarifications it had sought from the United States and decided to remind the United States of that request.<sup>3</sup> In response, the United States explained that the "'annual growth rate for 2004 quotas [would] be 2.54 per cent' and that, for the 2003 limits, the effective annual growth rate had been increased by prorating the growth rate of 2.54 per cent to reflect the number of days in 2003 that FYROM would be a Member of the WTO, 'resulting in a prorated growth rate for 2003 of 2.40241096 per cent.'"<sup>4</sup> Starting its examination of this response at its one hundred and third meeting, the TMB recalled that "the Report of the Working Party on the Accession of FYROM stated, *inter alia*, that 'for the purposes of FYROM's accession to

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<sup>1</sup> See G/TMB/R/103, paragraph 17.

<sup>2</sup> See G/TMB/R/100, paragraph 4.

<sup>3</sup> See G/TMB/R/101/Rev.1, paragraph 5.

<sup>4</sup> See G/TMB/R/102, paragraph 6.

the WTO, the phrase "day prior to the date of entry into force of the Agreement on Textiles and Clothing" shall be deemed to refer to the day prior to the date of accession of FYROM to the WTO. To [the] base level [of the restrictions notified] the increase in growth rates provided for in Article 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, in the Agreement on Textiles and Clothing from the date of FYROM's accession.' In addition, the TMB recalled that it had already examined notifications made under Article 2.1 by the United States where the growth-on-growth provisions had been reported to be implemented by the United States, with respect to the quantitative restrictions notified, in a similar way (i.e. by using proration). Before proceeding further with the review of this element of the notification by the United States, the TMB decided to bring the additional information provided by the United States to the attention of the Former Yugoslav Republic of Macedonia.[original footnote omitted]"<sup>5</sup>

7. At its one hundred and fourth meeting, the TMB, noting that no observation or follow-up communication had been received from FYROM, examined in detail the additional information provided by the United States regarding the methodology applied in implementing the growth-on-growth provisions of the ATC in relation to imports subject to restrictions from FYROM.<sup>6</sup> The TMB found that once the United States had concluded that it had been appropriate to apply the provisions of Article 2.14(b) to FYROM for 2003 (since FYROM had become a Member in that year), the United States should have implemented in full the 27 per cent increase in the respective growth rates for the year 2003, instead of prorating it for the period of FYROM's actual membership during that year. The TMB, therefore, invited the United States to reconsider its position and implement the full 27 per cent increase in the respective growth rates applicable to Stage 3 also for the year 2003. It was expected that the United States would report back to the TMB on the results of this re-examination as soon as possible.

8. In examining the present communication received from the United States, the TMB observed that in support of the conclusion that it could not agree with the TMB's reasoning, the United States stated that it had used the same methodology for FYROM as was used to calculate accelerated growth for China after its WTO accession and the United States continued to believe that this was the most appropriate methodology to use. Since this was the only argument specifically mentioned in the communication received from the United States, the TMB observed that the United States had not provided any reason or consideration that had not already been raised by it earlier or would have been ignored by the TMB during previous stages of its examination of the same matter either in relation to FYROM or to China.

9. In light of the above, and in particular, the reference made by the United States to the methodology it had used in relation to China, the TMB noted that the detailed examination and analysis it had made with respect to the methodology applied by the United States *vis-à-vis* China<sup>7</sup> applied, *mutatis mutandis*, to the present case. The TMB reiterated, *inter alia*, its view that nothing in the language of the respective provisions of the Report of the Working Party on the Accession of FYROM<sup>8</sup>, including the term "as appropriate", suggested that the implementation of the increase in growth rates provided for in Article 2.14, according to which "the level of each restriction shall be increased annually [...]" (emphasis added) could be altered. Therefore, in the view of the TMB, the provisions of the Working Party report did not provide an authorization not to implement in full for the year 2003 the annual increase stipulated in Article 2.14(b).

10. The TMB expressed its concern that the United States had not implemented for the year 2003 the full 27 per cent increase in the respective growth rates applicable to Stage 3. Recalling that pursuant to the provisions of Article 8.1, the TMB was established "[i]n order to supervise the

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<sup>5</sup> Ibid.

<sup>6</sup> See G/TMB/R/103, paragraphs 4 to 15.

<sup>7</sup> See G/TMB/R/90, paragraphs 25 to 28; and G/TMB/R/98, paragraphs 17 to 27.

<sup>8</sup> See paragraph 6 above.

implementation of this Agreement, to examine all measures taken under this Agreement and their conformity therewith, and to take the actions specifically required by it by this Agreement [...]", it was noted that in addressing the methodology used by the United States, the TMB had to rely on the applicable provisions of the ATC and the related provisions of the Report of the Working Party on the Accession of FYROM. The TMB had examined the relevant aspects of this matter, including the issue of conformity. It was also recalled that though the matter had been brought to the attention of FYROM, no communication had been received from it. Hence the Body confined itself to the mandate specified in the first sentence of Article 2.21 under which the specific action required from the TMB is to keep under review the implementation of the provisions of Article 2.

#### **Notification under Articles 2.8(c) and 2.11 of the ATC**

11. The TMB reviewed, under Article 2.21, the notifications made pursuant to Articles 2.8(c) and 2.11 by Canada (G/TMB/N/464), China (G/TMB/N/463) and the United States (G/TMB/N/466). Canada notified that "on 1 January 2005, Canada will integrate into GATT 1994 all textile and clothing products to which the ATC applies, as listed in the Annex of the ATC, that were not integrated during the first three stages of integration under the ATC. On this date, Canada will eliminate all remaining restrictions under the ATC on such products, and Canada will have integrated into GATT 1994 all products listed in the Annex of the ATC." China stated that "pursuant to Article 2.8(c) of the Agreement on Textiles and Clothing, China will integrate all the remaining products not covered by China's first, second and third integration programmes into GATT 1994 on 1 January 2005." The United States for its part notified that "on 1 January 2005 the United States will integrate into GATT 1994 all textile and clothing products to which the ATC applies, as listed in the Annex of the ATC, that were not integrated during the first three stages of integration under the ATC. On this date, the United States will eliminate all remaining restrictions under the ATC on such products, and the United States will have integrated into GATT 1994 all products listed in the Annex to the ATC."

12. In reviewing the above-mentioned notifications under Article 2.21, the TMB noted that the three Members confirmed that on the first day of the 121<sup>st</sup> month that the WTO Agreement would be in effect their respective textiles and clothing sector would be integrated into GATT 1994. The TMB, noticing that the three Members had not provided a detailed list of the products that would, in effect, be integrated on 1 January 2005, observed that, in order to inject the necessary transparency in the implementation of the ATC, it would be useful to provide such a detailed list of the products to be integrated on 1 January 2005 and invited all Members concerned to provide such a list. The TMB recalled, furthermore, that it had already reminded Members of the notification requirements contained in Articles 2.8(c) and 2.11.<sup>9</sup>

13. The TMB noted, furthermore, that in their respective notifications, both Canada and the United States had stated specifically that on the date of full integration, i.e. on 1 January 2005, all remaining restrictions under the ATC would be eliminated. The TMB observed that these reaffirmations were fully in line with the provisions of Articles 2.8(c) and 9. It was also recalled that the quantitative restrictions maintained under Article 2 of the ATC were being implemented through additional procedures, such as the administrative arrangements agreed between Members and notified under Article 2.17. The TMB recalled that these administrative arrangements could only be deemed necessary in relation to the implementation of restrictions applied under the ATC. Therefore, with the elimination of all quantitative restrictions under the ATC, all related administrative procedures and measures, including those specified in the administrative arrangements notified pursuant to Article 2.17, shall also stand terminated.

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<sup>9</sup> See G/TMB/R/105, paragraph 7.

**Preparation for the TMB's 2004 comprehensive report under Article 8.11 of the ATC**

14. The TMB considered and agreed on a possible structure for the comprehensive report on the implementation of the ATC during its third stage, to be transmitted to the Council for Trade in Goods in the context of the major review envisaged in Article 8.11 of the ATC. Furthermore, the TMB decided to remind WTO Members of some of the notification requirements contained in the ATC, regarding which only a few or no notifications had been received, and also to seek additional information and comments from Members which they consider relevant in the context of the TMB's preparation of its comprehensive report.<sup>10</sup>

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<sup>10</sup> Issued as G/TMB/30.