

**Textiles Monitoring Body**

**REPORT OF THE SECOND MEETING**

1. The Textiles Monitoring Body held its second meeting on 13-15 and 17-21 July 1995.
2. The following members and/or alternates/second alternates were present: Messrs. Daly/Berz; Kumar; Lee/Tong; Munir; Pangaribuan/Suboh; do Prado/Prado; Saeki; Saint-Jacques/Rey; Tagliani; Wentzel/Kacar/Hovorka.
3. The report of the first meeting was adopted (G/TMB/R/1).
4. In the light of the number of requests for consultations made by the United States under Article 6 of the Agreement on Textiles and Clothing, the TMB began an exchange of views on the implications of the expression in paragraph 1 of Article 6 of the Agreement on Textiles and Clothing to the effect that "the transitional safeguard should be applied as sparingly as possible".

**Notifications under Article 6.10 of the Agreement on Textiles and Clothing**

**United States/Costa Rica, Honduras, Thailand and Turkey: imports of cotton and man-made fibre underwear (US category 352/652)**

5. The TMB received notifications from the United States, under paragraph 10 of Article 6 of the Agreement, of safeguard actions it had taken on imports of products of category 352/652 (cotton and man-made fibre underwear) from Costa Rica, El Salvador, Honduras, Thailand and Turkey. These actions had been introduced with effect from the following dates:

Costa Rica:	27 March 1995
El Salvador:	21 March 1995
Honduras:	27 March 1995
Thailand:	29 March 1995
Turkey:	28 March 1995

The TMB had also received notifications on the same action by El Salvador and Turkey under the same paragraph of Article 6 referring these actions to the TMB for review, and by Thailand under paragraphs 5 and 6 of Article 8 (see paragraphs 28 to 33).

6. Bilateral consultations were held between the United States and Costa Rica, Honduras and Turkey, but were inconclusive. The TMB was informed prior to the meeting that an agreement had been reached under paragraph 9 of Article 6 between the United States and El Salvador
7. The TMB invited the participation of Costa Rica, Honduras, Thailand, Turkey and the United States, which sent delegations to Geneva to present their respective cases.

8. The representative of the **United States** submitted that her Government's action was justified for the following main reasons:

- serious damage, or actual threat thereof, existed with respect to the US domestic producers of cotton and man-made fibre underwear (category 352/652), as a result of a sharp and substantial increase of quantities of imports, within the meaning of paragraph 2 of Article 6 of the Agreement; more recent data were submitted to the TMB in a revised market statement to confirm this;
- this increase had an adverse impact on the domestic production of such products, which was therefore declining, and resulted in a loss of US market share by domestic producers;
- further evidence of serious damage, or actual threat thereof, was shown in the increasing imports/production ratio and in the drop in employment figures for production workers in the US cotton and man-made fibre underwear industry, declining man-hours worked, and declining wages;
- a survey of individual firms engaged in the production of goods falling in category 352/652 showed evidence of serious damage to the industry in the form of losses in employment, plant closures, sales and profits decreasing, shifts to other lines of production than cotton and man-made fibre underwear, and disinvestment taking place. A significant number of facilities producing goods falling in category 352/652, or of workers employed in such facilities, had received trade adjustment assistance, as it was found that they were adversely impacted by imports.

9. Such serious damage, or actual threat thereof, was attributed by the **United States** *inter alia* to a sharp and substantial increase in imports from Colombia, Costa Rica, the Dominican Republic, El Salvador, Honduras, Thailand and Turkey, at prices substantially below the US producers' price. The United States had, subsequent to the request for consultations, reached bilateral agreements under paragraph 9 of Article 6 of the Agreement with Colombia and the Dominican Republic, in addition to that with El Salvador as mentioned in paragraph 6.

10. The representative of **Costa Rica** stated that the US action was not justified for the main reasons that, on the basis of facts, it could not be argued that there was a case of serious damage or threat of serious damage to the US producers of cotton and man-made fibre underwear caused by an increase in imports:

- indeed, the decline in US domestic production of this category (which had been measured by the US taking a peak year as a benchmark) was paralleled by an increase in US production offshore, which had reached 30 per cent of total US output, as some US manufacturers had chosen to expand production sharing *inter alia* in the Caribbean, thus taking advantage of US laws. This important aspect of the issue had been ignored by the original market statement submitted by the United States to Costa Rica at the time the request for consultation had been made;
- in addition, among all products of category 352/652, only men's and boys' undershirts, and little boys' underwear had experienced a decline in production. The United States had not provided any evidence that such declines were caused by a sharp and substantial increase in imports;

- the United States had not substantiated convincingly the claim that its industry was experiencing serious damage. What was happening was more of an autonomous restructuring of the industry in response to market forces. In fact, a number of major US manufacturers of products of category 352/652 had pronounced themselves against the US action;
- the revised data submitted by the United States were confusing and in some cases contradictory. Price data submitted were called into question, in particular the US average producer price;
- there was also no increase in imports other than of products using US components, i.e. the only real increase in imports was due to a growing recourse by the US industry to offshore production;
- in addition, the possible correlation between illegal transshipments and declining production of men's and junior boys' undershirts should not be overlooked.

11. The representative of **Honduras**, following the same line of argument, also considered that the United States had failed to demonstrate, as envisaged in paragraphs 3 and 4 of Article 6 of the Agreement, that there was serious damage or threat thereof to the US domestic industry of category 352/652, as caused by imports of these products from Honduras:

- the United States had ignored that the increase in US imports in category 352/652 was the result of an increase of that portion of trade which is domestic production assembled offshore by major US companies using US components;
- within the various categories of products contained in category 352/652, only men's and boys' undershirts, and little boys' underwear had experienced a decline in production; and the United States had provided no evidence that these declines in production were caused by a sharp and substantial increase in imports;
- the United States had not substantiated the claim of existence of serious damage to the domestic industry due to imports with sufficient evidence;
- furthermore, the additional data submitted to the TMB by the United States were not available at the time the action had been taken, and should therefore not be the basis for the TMB's recommendation.

12. The representative of **Thailand** stated that, without prejudice to the question of principle posed by Thailand, i.e. that the United States could not, under the Agreement, take a safeguard measure against imports of products of category 352/652 from Thailand since such imports were already subject to a group limit (see paragraphs 28 to 33), considered that the justifications produced by the United States in its market statements did not substantiate the claim that increased imports caused, or threatened to cause, serious damage to the US industry producing like and/or directly competitive products:

- one of the main reasons for the above was that the United States in its original statement had failed to take into account the particular nature of offshore production, which represented about 30 per cent of US production of that category. If such account was taken, and outward processing trade was deducted from imports, the situation would be different, in particular the imports/production ratio would be halved;

- with the US industry holding a domestic market share of about 80 per cent, it could not be argued that it was suffering serious damage, or threat thereof, because of imports;
- in addition, the fact that the reported average US producers' prices had increased since 1992 seemed to contradict the existence of serious damage caused by imports;
- Thailand had also noted that in several bilateral agreements concluded in the same category, the total level of access agreed (which included very significant access opportunities in the form of Guaranteed Access Levels<sup>1</sup>) was higher than total actual imports from all sources. This seemed to indicate that the US action was not intended to address damage to the US underwear industry but rather to protect the US fabric industry.

13. The representative of **Turkey** stated that the United States had failed to demonstrate that imports of category 352/652 had increased in such quantities so as to cause serious damage or actual threat thereof to the US domestic industry producing like and/or directly competitive products, as had been demonstrated by the representatives of Costa Rica, Honduras and Thailand:

- given the large amount of outward processing trade involved in this case, it seemed that the US action was designed more to protect the US domestic fabric industry than the US underwear industry. The Agreement allowed safeguard actions to be taken only against like and directly competitive products experiencing serious damage, but did not permit restraints on underwear in order to protect fabric;
- equity considerations had also to be borne in mind, and if the US policy was to encourage recourse to outward processing, this should not be done at the expense of other countries not involved in such trade.

14. During the review, the TMB was informed that the United States and Turkey had arrived at a mutually agreeable resolution of the issue under paragraph 9 of Article 6.

15. While starting the examination of the request submitted by Thailand in the context of the safeguard action introduced by the United States on imports of category 352/652 from Thailand (see paragraphs 28 to 33), the TMB was informed that the United States had decided to rescind this safeguard measure against Thailand.

16. During its review under paragraphs 2 and 3 of Article 6 of the safeguard action taken by the United States against imports of category 352/652 from Costa Rica and Honduras, the TMB found that serious damage, as envisaged in these provisions, had not been demonstrated. The TMB could not, however, reach consensus on the existence of actual threat of serious damage. The TMB recommended that further consultations be held between the United States and the parties concerned, with a view to arriving at a mutual understanding, bearing in mind the above, and with due consideration to the particular features of this case, as well as equity considerations.

17. These consultations shall be held consistent with the Agreement on Textiles and Clothing, in particular with Articles 6 and 4, and be concluded within 30 days. Parties shall report to the TMB on the outcome of such consultations no later than at the end of that period.

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<sup>1</sup>Guaranteed Access Levels (GALs) are quantities of products of a category that a country can export to the United States without being subject to quantitative limitation, provided the actual product shipped qualifies for such treatment, *inter alia* by being made of "US components".

18. The TMB noted that, with respect to the introduction of a safeguard measure, the Agreement on Textiles and Clothing does not provide any indication with respect to the effective date of implementation of that measure.

19. In reaching its recommendation, the TMB examined all the information provided by the parties, including the role played by outward processing trade. On that basis, and keeping also in mind the particular nature of this trade flow, the TMB was of the view that a number of important indicators, *inter alia* the drop in US domestic production of cotton and man-made fibre underwear, the parallel increase in imports of these products, and the status of this industry, were not such as to warrant a claim of serious damage being caused to the US industry by imports. However, the TMB could not agree, on the basis of all the information provided, whether or not there existed a threat of serious damage caused to the US industry by imports of products of category 352/652.

**United States/Honduras: imports of cotton and man-made fibre pyjamas and other nightwear (US category 351/651)**

20. The TMB received a notification from the United States, under paragraph 10 of Article 6 of the Agreement, of a safeguard action it had taken on imports of products of category 351/651 (cotton and man-made fibre pyjamas and other nightwear) from El Salvador and Honduras. These actions had been introduced with effect from 27 March 1995.

21. Bilateral consultations were held between the United States and El Salvador, and between the United States and Honduras, those with Honduras being inconclusive. The TMB was informed prior to the meeting that an agreement had been reached under paragraph 9 of Article 6 between the United States and El Salvador.

22. The TMB invited the participation of Honduras and the United States, which sent delegations to Geneva to present their respective cases.

23. The representative of the **United States** explained that the increase in imports of cotton and man-made fibre pyjamas and other nightwear was causing serious damage, or actual threat thereof, to the US industry producing these products for the following main reasons:

- a decrease in domestic production, a loss of the market share held by US domestic manufacturers, increased import penetration, reaching very high levels, a decline in employment, average man-hours worked, total annual production and workers' wages;
- a significant number of facilities producing goods falling in category 351/651, or of workers employed in such facilities, had received trade adjustment assistance, as it was found that they were adversely impacted by imports;
- imports were entering the United States at prices which were below the average US domestic price, and the inability of US producers to compete with import prices were cited as the main factor responsible for the declines in domestic operations.

24. Serious damage, or actual threat thereof, was attributed by the **United States** *inter alia* to a sharp and substantial increase of low priced imports from El Salvador, Honduras and Jamaica. The United States had, subsequent to the request for consultations, reached bilateral agreement under paragraph 9 of Article 6 of the Agreement with Jamaica, in addition to the agreement with El Salvador mentioned in paragraph 21.

25. The representative of **Honduras** stated that the United States had not presented credible evidence of damage to the US industry. He noted that:

- the US had not shown that any possible serious damage was caused by a sharp and substantial rise in imports of like and/or directly competitive products at prices below those prevailing for similar goods of comparable quality in the US market;
- the two market statements supplied by the United States contained some inconsistencies, in particular with respect to US producers' prices, employment and man-hours. These called into question the validity of the determination of serious damage or actual threat thereof made by the United States. The representative of Honduras objected to using information which had not been provided at the time the restraint had been introduced as a basis for the TMB's recommendation;
- the United States had not taken into account in their assessment of the situation the particular nature and importance of outward processing trade in this category, in particular in imports from Honduras. In this respect, there could be no conclusion of serious damage to an industry that depended on this co-production for up to 30 per cent of its output;
- in the bilateral agreements recently concluded with two other countries following the same determination of serious damage by the United States on this category, the total access level agreed was substantially above the level of imports from Honduras.

26. The TMB reviewed the safeguard measure taken by the United States against imports of category 351/651 from Honduras under paragraphs 2 and 3 of Article 6.

27. The TMB, having examined all the information provided by the parties, found that serious damage, or actual threat thereof, had not been demonstrated and recommended that the US rescind the measure.

#### **Notification under Articles 8.5 and 8.6 of the Agreement on Textiles and Clothing**

#### **United States/Thailand: imports of cotton and man-made fibre underwear (US category 352/652)**

28. In the context of the safeguard action introduced by the United States on imports of cotton and man-made fibre underwear (see paragraphs 5 to 19), the TMB received a notification from Thailand under paragraphs 5 and 6 of Article 8 of the Agreement. According to this notification, since paragraph 4 of Article 6 of the Agreement provided that no safeguard measure shall be applied to the exports of any member whose exports of the particular products were already under restraint under the Agreement, the United States had no right to introduce a safeguard measure on imports of category 352/652 from Thailand, as that category was already subject to a group limit.

29. The representative of Thailand confirmed that, irrespective of the US decision to rescind the safeguard measure against imports from Thailand (see paragraph 15), Thailand wanted the TMB to review the question of principle raised.

30. The TMB invited both parties to present their respective views.

31. The representative of **Thailand** argued that the safeguard action was not consistent with Article 6 of the Agreement, requiring in its paragraph 1 that the transitional safeguard should be applied as sparingly as possible, consistently with the provisions of this Article and the effective implementation of the integration process under this Agreement, and in its paragraph 4 that such safeguard measure

shall not be applied to the exports of any Member whose exports of the particular product are already under restraint under this Agreement. Since imports from Thailand of category 352/652 were already subject to a group limit, which the United States had chosen to maintain under the Agreement pursuant to Article 2, such imports could not be subject to an Article 6 action. Thailand therefore asked the TMB for a finding that the US request for consultations concerning imports of products of category 352/652 from Thailand under Article 6 of the Agreement was invalid.

32. The representative of the **United States** explained that, despite the US request for consultation addressed to Thailand under Article 6 of the Agreement, and repeated efforts on the part of the United States, it had not been possible to arrange a meeting with Thailand. Thailand had argued subsequently that paragraph 4 of Article 6 of the Agreement did not authorise the United States to request consultations in this case, since category 352/652 was already under a group limit. The United States believed that the Thai position was without merit. Furthermore, if Thailand wanted the TMB to examine the question of principle, the request should be submitted independently from the specific case now before the TMB. Notwithstanding, Article 8 required consultations to be held between parties before a matter could be reviewed by the TMB. Therefore, the United States believed that the TMB should not review this matter until such consultations were held.

33. After having heard the presentation of the parties the TMB decided to resume the discussion of this issue at a subsequent meeting.