RESTRICTED

WT/DSB/M/13

13 May 1996

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WORLD TRADE ORGANIZATION

DISPUTE SETTLEMENT BODY
27 March 1996

MINUTES OF MEETING

Held in the Centre William Rappard
on 27 March 1996

Chairman: Mr. Celso Lafer (Brazil)

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1. United States - Measures affecting imports of women's and girls' wool coats
- Request by India for the establishment of a panel (WT/DS32/1)

The Chairman drew attention to the communication from India in WT/DS32/1. He recalled that in cases of disputes initiated pursuant to the Agreement on Textiles and Clothing (ATC) which had been examined by the Textiles Monitoring Body (TMB), but which remained unresolved, "either Member may bring the matter before the Dispute Settlement Body (DSB) and invoke paragraph 2 of Article XXIII of GATT 1994 and relevant provisions of the DSU"[1].

[1]Article 8.10 of the ATC.

The representative of India said that full details concerning this matter had been circulated in WT/DS32/1 on 15 March 1996. He recalled that on 30 December 1994, India had received a request from the United States to hold consultations under the bilateral textile agreement[2] on imports of women's and girls' wool coats (category 435). India and the United States had met in Geneva on 18-19 April 1995 to discuss certain textile issues of mutual interest, including the above-mentioned request for consultations. On 18 April 1995, India had explained that it was legally unsustainable for the United States to pursue consultations under the bilateral agreement, which had terminated on 31 December 1994, and had pointed to the anomalies and inconsistencies that could arise with regard to the ATC if the United States were to pursue its request. On that same date, the United States had made a new request for consultations under Article 6 of the ATC on imports of women's and girls' wool coats (category 435). Under this new request, consultations had been held on 14-16 June 1995. India had pointed out, on the basis of the data provided with the request, that the United States had referred to "serious damage or actual threat thereof" to its industry, but had not clearly indicated whether it had determined "serious damage" or "actual threat thereof", although the statement attached to the text of this request had consistently referred to "serious damage". India had argued that, based on this data, there was no justification for any action under Article 6 of the ATC. Nevertheless, on 14 July 1995, the United States had imposed a unilateral restraint on imports of women's and girls' wool coats from India, effective retroactively from 18 April 1995.

Pursuant to Article 6.10 of the ATC, the TMB had examined the matter on 28 August - 1 September and 12-15 September 1995, and had found that serious damage had not been demonstrated. However, it could not reach a consensus on the existence of actual threat of serious damage. The TMB had pointed out that, in reviewing its findings on this matter the parties should bear in mind that the ATC was silent as to whether or not the restraint could be maintained. India had hoped that the TMB findings would result in the withdrawal of the restraint by the United States. Without prejudice to its rights under the WTO Agreement, India had sent a communication to the TMB, under Article 8.6 of the ATC, drawing its attention to the continuation of the restraint. It held the view that Article 6 of the ATC provided that transitional safeguard measures could continue to exist, and be justified, only subject to the endorsement by the TMB. The absence of consensus indicated that the action under examination had not been determined to be justified, and therefore was not valid under the ATC. On 13-17 November, the TMB had reverted to this matter and had found that it could not make any recommendation in addition to the conclusion reached at its meeting in September. Furthermore, in the absence of consensus on the existence of actual threat of serious damage, the TMB could not reach a consensus on whether or not the restraint could be maintained. It had concluded that its review of the matter under the relevant provisions of the ATC was completed.

The matter remained unresolved despite: (i) the consultations held between India and the United States, under Article 6.7 of the ATC, in April and June 1995; (ii) its examination by the TMB in accordance with Article 6.10 of the ATC at its meetings in August and September 1995; (iii) the communication from India, under Article 8.6 of the ATC, to the TMB in October 1995, without prejudice to its rights under the WTO Agreement, regarding the continuation of the restraint on category 435 by the United States despite the absence of the TMB upholding the safeguard action taken by the United States; and (iv) the TMB review and report on the matter at its meeting in November 1995.

India considered that all requirements of Article 8.10 of the ATC for direct recourse to Article XXIII:2 of GATT 1994 had been met. It, therefore, requested that a panel be established at the present meeting. It also requested that the panel consider and find that: (i) the restraint imposed by the United States, on 14 July 1995, on imports women's and girls' wool coats (category 435) from India, effective 18 April 1995, was inconsistent with Articles 6, 8 and 2 of the ATC; (ii) the action by the United States to impose the restraint on imports of women's and girl's wool coats (category 435)

[2]Agreement between the United States and India under the MFA.

from India nullified or impaired the benefits accruing to it under the WTO Agreement, the GATT 1994, and in particular the ATC; (iii) the action by the United States to maintain the restraint on category 435 was also unjustified in the light of the TMB findings that serious damage had not been demonstrated and the absence of consensus on the existence of actual threat of serious damage; and (iv) the United States should bring the measure into conformity with the ATC by withdrawing the restraint imposed on category 435 from India.

India had also requested supplementary findings by the panel that: (i) the absence of a clear recommendation by the TMB upholding the safeguard action taken by the United States implied that the TMB did not find the safeguard action justified and therefore the importing country had a legal obligation to withdraw the restraint; (ii) in accordance with the ATC, in particular its Article 6, the burden of demonstrating serious damage or actual threat thereof lay with the United States as the importing country, which had to make this determination prior to the invocation of Article 6 of the ATC; it should be noted that data requirement would be different for the determination of serious damage or actual threat thereof; (iii) there was no provision in the ATC under which the United States as the importing country could impose a restraint with retroactive effect. India requested that the panel be established with standard terms of reference in accordance with Article 7.1 of the DSU.

The representative of the United States said that, in September 1995, when the TMB had taken its decision on category 435, which covered women's and girls' wool coats, his country had indicated that it was willing to reconsider its restraint on category 435 depending on subsequent market developments. Several months ago, the United States had become convinced that the restraint on category 435 was no longer necessary. His authorities had requested India to hold consultations on this matter. It had not been possible to find mutually acceptable dates for these consultations. It was unfortunate that India had requested the establishment of a panel before providing the United States with this opportunity to resolve the issue of its restraint on category 435. Accordingly, at the present meeting, the United States was not in a position to join consensus on the establishment of a panel. The US chief textile negotiator would be communicating directly to her Indian counterpart the US decision to withdraw the restraint.

The representative of India said that the United States was probably referring to informal indications given during a September TMB review that it would be willing to reconsider its restraint on category 435 depending on subsequent market developments. He pointed out that on 7 November 1995, the United States had sent a communication to the TMB in which it had indicated that it had decided to maintain its restraint on the above-mentioned category as provided for in Article 6 of the ATC. He referred to the discrepancy between the statement made today and the communication sent to the TMB on 7 November and questioned the need for the United States, if it had become convinced several months ago that the restraint on category 435 was no longer necessary, to consult with India prior to the withdrawal of the restraint. He was concerned that the idea behind seeking bilateral consultations before actually withdrawing the restraint might be to ask India to make a significant concession as a *quid pro quo* for withdrawal of the restraint by the United States. He noted that the United States was not willing to accept the establishment of a panel at the present meeting. Therefore, he wished to request that a special meeting of the DSB be convened urgently in order to consider this matter.

The DSB took note of the statements and agreed to revert to this matter at its next meeting. Due to the Easter holidays, the meeting would not be convened within fifteen days as requested by the DSU but on 17 April 1996 in the understanding that this would not constitute a precedent for convening DSB meetings.

2. United States - Measures affecting imports of woven wool shirts and blouses
- Request by India for the establishment of a panel (WT/DS33/1)

The Chairman drew attention to the communication from India in WT/DS33/1. As he had recalled under the previous item, in cases of disputes initiated pursuant to the Agreement on Textiles and Clothing which had been examined by the Textiles Monitoring Body (TMB), but which remain unresolved, "either Member may bring the matter before the Dispute Settlement Body (DSB) and invoke paragraph 2 of Article XXIII of GATT 1994 and relevant provisions of the DSU"[3].

The representative of India said that full details concerning this matter had been circulated in WT/DS33/1 on 15 March 1996. He recalled that on 30 December 1994, India had received a request from the United States to hold consultations under the bilateral textile agreement[4] on imports of woven wool shirts and blouses (category 440). India and the United States had met in Geneva on 18-19 April 1995 to discuss certain textile issues of mutual interest, including the above-mentioned request for consultations. On 18 April 1995, India had explained that it was legally unsustainable for the United States to pursue consultations under the bilateral agreement which had terminated on 31 December 1994, and had pointed out to the anomalies and inconsistencies that could arise with regard to the ATC if the United States were to pursue its request. On that same date, the United States had made a new request for consultations under Article 6 of the ATC on imports of woven wool shirts and blouses (category 440). Under this new request, consultations had been held on 14-16 June 1995. India had pointed out, on the basis of data provided with the request, that the United States had referred to "serious damage or actual threat thereof" to its industry, but had not clearly indicated whether it had determined "serious damage" or "actual threat thereof", although the statement attached to the text of this request had consistently referred to "serious damage". India had argued that, based on this data, there was no justification for any action under Article 6 of the ATC. Nevertheless, on 14 July 1995, the United States had imposed a unilateral restraint on imports of woven wool shirts and blouses from India, effective retroactively from 18 April 1995.

Pursuant to Article 6.10 of the ATC, the TMB had examined the matter on 28 August - 1 September and 12-15 September 1995, and had found that the actual threat of serious damage had been demonstrated, which could be attributed to the sharp and substantial increase in imports from India. However, the TMB had not indicated whether it had considered the United States' claim of "serious damage". On 16 October 1995, in accordance with Article 8.10 of the ATC, India had sent a communication to the TMB providing the reasons for its inability to conform with the TMB recommendations. It had pointed out, *inter alia*, that the criteria to determine an actual threat of serious damage had not been considered by the TMB during its examination of the matter, nor had any view been taken on the question of the retroactive application of the restraint. It had also referred to the absence and inadequacy of data presented by the United States with regard to several factors referred to in Article 6 of the ATC, and believed that a situation of "actual threat of serious damage"did not exist at all. On 13-17 November, the TMB had reverted to this matter and had found that it could not make any recommendations in addition to its conclusion reached at its meeting in September. It considered its review of the matter completed.

The matter remained unresolved despite: (i) the consultations held between India and the United States, under Article 6.7 of the ATC, in April and June 1995; (ii) its examination by the TMB under Article 6.10 of the ATC at its meetings in August and September 1995; (iii) the communication from India to the TMB under Article 8.10 of the ATC stating reasons for India's inability to conform with the recommendations by the TMB; and (iv) the TMB review and report on the matter under

[3]Article 8.10 of the ATC

[4]Agreement between the United States and India under the MFA.

Article 8.10 of the ATC at its meeting in November 1995. India considered that all requirements of Article 8.10 of the ATC for direct recourse to Article XXIII:2 of GATT 1994 had been fully met. It, therefore, requested that a panel be established at the present meeting. It also requested that the panel consider and find that: (i) the restraint imposed by the United States, on 14 July 1995, on imports of woven wool shirts and blouses from India, effective 18 April 1995, was inconsistent with Articles 6, 8 and 2 of the ATC; (ii) the action by the United States to impose the restraint on imports of woven wool shirts and blouses from India nullified or impaired the benefits accruing to India under the WTO Agreement, the GATT 1994, and in particular the ATC; (iii) the United States should bring the measure into conformity with the ATC by withdrawing the restraint imposed on imports of woven wool shirts and blouses from India.

India had also requested supplementary findings by the panel that: (i) in accordance with the ATC, and in particular its Article 6, the burden of demonstrating serious damage or actual threat lay with the United States as the importing country. The United States had to determine prior to the invocation of Article 6 of the ATC whether to claim the existence of serious damage or actual threat thereof. These were not interchangeable because the data requirement would be different. It would not be valid to transfer a transitional safeguard to a situation of actual threat when the claim of serious damage had failed; (ii) there was no provision in the ATC under which the United States as the importing country could impose a restraint with retroactive effect. India requested that the panel be established with standard terms of reference in accordance with Article 7.1 of the DSU.

The representative of the United States said that his country was unable to join consensus on the establishment of a panel at the present meeting. India was, of course, free to pursue its request for the establishment of a panel on this matter. He recalled that in this dispute the TMB had agreed unanimously on the existence of actual threat of serious damage to the US market. It had also been able to attribute this threat to imports from India. The United States regretted that India requested the establishment of a panel in the face of this unanimous action by the TMB. The United States had been subject to three unfavourable recommendations by the TMB and had accepted each without question. India's action undermined the effectiveness of the TMB by calling into question its authority even in cases in which the TMB rendered a clear ruling.

The representative of India said that his country regretted the reference made by the United States that India's request for the establishment of a panel undermined the effectiveness of the TMB. He pointed out that if availing of the legal remedies available in an agreement amounted to undermining the effectiveness of any institution involved in the process, one could say that the recent appeal by the United States of a panel report would undermine the effectiveness of the panel process. In this dispute, India had strictly followed the letter and the spirit of the ATC. Article 8.10 of the ATC provided Members with the opportunity to report within one month of the reasons for their inability to conform with the TMB recommendations. He recalled that, in this case, the TMB had reviewed the matter again but could not alter its previous conclusion. Under Article 8.10 of the ATC, India had a right to request the establishment of a panel. He also regretted that the United States had made a reference concerning the unanimous decision by the TMB. He recalled that TMB members served on an *ad personam* basis and even if they joined consensus on a particular issue this did not bind governments. In accordance with the ATC, TMB members appointed by countries who were parties to the dispute under review could not block the decision. He requested the DSB to convene a meeting in order to revert to this matter as soon as possible.

The DSB took note of the statements and agreed to convene a meeting on 17 April in order to revert to this matter.

3. Turkey - Action on imports of textiles and clothing
- Statement by India

The representative of India said that his authorities had requested Turkey to hold consultations under Article XXIII:1 of GATT 1994 and Article 4 of the DSU on quantitative restrictions imposed unilaterally on imports of a broad range of textile and clothing products from India. The request for consultations contained in WT/DS34/1 had been circulated on 25 March. India looked forward to Turkey's reply in order to arrange a mutually convenient date and place for consultations.

The representative of Turkey said that his delegation would shortly confirm its readiness to enter into consultations with India on this matter. However, he wished to underline several points. First, quantitative restrictions on imports of textile and clothing products had been introduced pursuant to the customs union between the European Community and Turkey which was fully in conformity with the requirements of Article XXIV of GATT 1994. Article XXIV:8(a) of GATT 1994 and Article 12 of the Decision No.1/95 of the EC-Turkey Association Council, contained in WT/REG22/1, required Turkey to apply, in the textile sector, substantially the same commercial policy as the Communities. Second, prior to the establishment of the customs union, clothing products had virtually not been imported into Turkey due to high tariffs and other measures. At present, 90 per cent of quantitative restrictions, in respect of third countries, were applied on products that had not, or virtually not, been imported into Turkey in the past three years. There was no doubt that the establishment of the customs union had led to a considerable opening of Turkey's market across- the-board through a substantial reduction of customs duties and the elimination of other trade barriers. While it might appear less liberal, the introduction of the Communities' regime of quantitative restrictions on textiles and clothing products would effectively open a previously closed market. Since August 1995, prior to the establishment of the customs union, Turkey had made considerable efforts to hold consultations with all parties concerned, including India, in order to find mutually agreed solutions. Many countries had shown great flexibility and understanding on this matter. On the other hand, despite several attempts, India had failed to respond positively to Turkey's desire to hold consultations. The quantitative restrictions on textiles and clothing products constituted only a sub-sector of the customs union and should not be examined separately. He believed that these measures and all other aspects of the customs union between the two parties should be examined by the Committee on Regional Trade Agreements. Finally, consultations on this matter should not only be requested with Turkey but with both parties to the customs union.

The representative of Hong Kong recalled that at the 21 February DSB meeting, his delegation had made a statement on this matter[5]. At the present meeting, he had only one specific comment to make. Although the quantitative restrictions had been imposed for nearly three months no details on this subject had been provided by Turkey. Hong Kong's understanding was that those quantitative restrictions were interim and had been designed for an initial period of three months which would expire at the end of March. Hong Kong had previously urged Turkey to rescind its action. He urged Turkey not to modify or renew its interim quantitative-restrictions regime beyond the end of this month, but to terminate it.

The representative of the European Communities said that, as indicated by Turkey, the Communities had wished, on several occasions, to hold consultations with India. However, these efforts had not been successful since India was not ready to enter into consultations. He recalled that, on 31 July 1995, Turkey had expressed the desire to hold consultations with India on this matter, but had received no reply. India had been contacted by Turkey, in Ankara, in November 1995. The Communities had also contacted India in Brussels. He reiterated that since the matter at hand referred to one aspect of the customs union to concentrate on that aspect only would provide a distorted picture

[5]WT/DSB/M/11

of the overall situation. He believed, therefore, that all aspects of the customs union should be considered during its examination by the Committee on Regional Trade Agreements. He recognized that India had the right to request consultations on this matter. However, since the customs union was between Turkey and the Communities he hoped that the Communities would participate in these consultations.

The representative of Japan expressed his delegation's great interest in this matter, and said that although Japan did not have detailed information it had some doubts about the consistency of the measures with Article XXIV of GATT 1994 and Article 2 of the Agreement on Textiles and Clothing (ATC). He therefore requested further information on this matter.

The representative of India thanked Turkey's delegation for its readiness to enter into consultations on this matter. India, like Hong Kong and Japan, did not have any official details on this subject. With respect to the efforts made to hold consultations, referred to by the Communities, India had not been clear under which provisions of the WTO Agreement these restrictions had been imposed - a lack of clarity that had existed for a very long time. However, he would provide a written response on this issue at the later stage. He recalled that a first communication on this subject had been received on 22 December 1995 and the restrictions had been imposed on 1 January 1996. He stressed that the consultations under Article XXIII:1 of GATT 1994 were essentially bilateral.

The DSB took note of the statements.

4. United States - Increase in the rates of duty on certain products of the European Communities (Presidential Proclamation No. 5759 of 24 December 1987)
   - Statement by the European Communities

The representative of the European Communities, speaking under "Other Business", drew attention to the unilateral measures taken by the United States as "compensation" against the Communities' directive prohibiting the use of hormones in the production of beef cattle, and the ban on imports into the Communities of beef from cattle raised with the use of hormones. As requested by the United States, the two parties would hold consultations on this matter later in the day. He underlined, however, that while requesting the consultations the United States had adopted and maintained, since January 1989, unilateral measures pursuant to Presidential Proclamation No. 5759 of 24 December 1987 aimed at "compensating" for the injury suffered as a result of the measures taken by the Communities. Punitive tariffs had been imposed by the United States on imports of products such as: beef, soluble or instant coffee extracts, certain drinks with low alcoholic content, tomatoes (preserved), fruit juices, and pet food. The value of such imports had amounted to more than US$ 90 million. The Communities considered that, in light of the multilateral rules, agreed upon by Members, the United States' attitude was unacceptable, since they had made determinations both on the legality of the Communities' measures and the trade damage they had suffered. The United States action was that of judge and party in this case, while it was up to the WTO to decide on the legality of any disputed measure. It was also contradictory and unacceptable for the extent of trade damage to be determined prior to examination by the WTO of the legality of measures. This was a basic foundation of the WTO rules. It was contradictory for a Member to apply unilateral retaliatory measures against another Member and at the same time request consultations pursuant to WTO rules. In the past, the Communities had, in other cases which did not concern them directly, to question recourse to such unilateral measures and even the threat of such measures which could have negative effects on trade. At the present meeting, he only wished to express concerns regarding the United States' position on this matter.

The representative of Japan said that Members had the obligation to resolve any dispute falling within the scope of the WTO Agreement through the DSU. Therefore, the United States' attempt to

find a solution on this matter through unilateral measures was, in his delegation's view, not only contrary to the letter but also to the spirit of the DSU, and should not be tolerated in the WTO. Japan believed that this matter should be resolved through the use of the dispute settlement mechanism.

The representative of Canada recalled that his country had requested to be joined in consultations which had been requested by the United States with the European Communities on the prohibition of imports of beef containing hormones.[6] With regard to the point raised by the Communities concerning the retaliatory action taken in 1989 by the United States, he said that Canada strongly believed in the dispute settlement system and firmly believed that retaliatory measures should only be taken after their authorization by the DSB. He noted that the United States' measures were taken prior to the completion of the Uruguay Round and implementation of its results. Canada hoped that under the new circumstances similar situations would not arise again in the same manner.

The Dispute Settlement Body took note of the statements.

5. Turkey- Action on imports of textiles and clothing
- Statement by Hong Kong (WT/DS29/1)

The representative of Hong Kong, speaking under "Other Business", recalled that at the 21 February DSB meeting, his delegation had raised serious concerns regarding the unilateral imposition of quantitative restrictions by Turkey on imports of a broad range of textile and clothing products from a large number of suppliers, including Hong Kong. On that occasion, Hong Kong had urged that the action taken by Turkey be rescinded. On 12 February, his authorities had requested Turkey to hold consultations under Article XXII:1 of the GATT 1994 and Article 4 of the DSU[7]. After four communications to Turkey, the date and venue for consultations had not yet been determined and the thirty-day requirement to enter into consultations, provided for in Article 4.3 of the DSU, had already elapsed. However, he understood that Turkey had informally indicated to agree to hold consultations in the middle of April. If Turkey, at the present meeting, confirmed this understanding, Hong Kong would attribute this to the very positive, though sometimes unstated, impact of the DSB.

The representative of Thailand, speaking also on behalf of Malaysia and the Philippines, recalled that on 22 February the above-mentioned Members had requested to join consultations under Article 4.11 of the DSU, on the unilateral imposition of quantitative restrictions by Turkey on imports of textile and clothing products.[8] He regretted that the thirty-day period to enter into consultations, provided for in Article 4.3 of the DSU, had elapsed, and despite the willingness to patiently await and to accommodate a possible new date for consultations, no formal reply had yet been received from Turkey on this matter. In view of their substantial trade interest in this case, the absence of response to the request for consultations should not be at the expense of the complaining parties' genuine efforts to seek a mutually-satisfactory solution at the earliest possible date. He hoped that a well-reasoned reply would be provided by Turkey as soon as possible. He urged that in the future, decisions of this nature be taken sufficiently in advance to enable all concerned Members to plan more effectively.

The representative of Turkey confirmed that his country had accepted to hold consultations with Hong Kong on 16-17 April in Geneva. He noted the statement made by Thailand which would be conveyed to his authorities.

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[6] WT/DS26/4

[7] WT/DS29/1

[8] WT/DS29/3

The DSB took note of the statements.

6. Requests to be joined in consultations under the DSU
- Announcement by the Chairman

The Chairman said that there had been several cases where a number of delegations had notified the DSB of their desire to be joined in the consultations initiated by other Members under Article 4.11 of the DSU. The practice of the Secretariat in such instances had been to circulate the full text of the notification as a WT/DS document. However, it took time to translate and circulate the full text, particularly when there were many requests to be joined in the same consultations. As a result, Members had often found themselves not to be in a position to know which other Members had indicated their desire to be joined in the consultations during the ten-day period in which such reports were allowed. For the purpose of an expeditious processing and circulation of communications he wished to propose an improvement in the procedure. Communications requesting to be joined in the consultations would not be reproduced in full, unless requested otherwise by the respective Member. Instead, the Secretariat would issue a note stating that a Member had requested to be joined in the consultations and that the text of the communication by that Member could be consulted at the Secretariat. He hoped that this change would contribute to the more efficient operation of the dispute settlement system. He announced that the text of this proposal was available to delegations at the reception desk and that he would revert to it at the next DSB meeting[9].

The DSB agreed to revert to this matter at its next meeting.

[9]Subsequently circulated in WT/DSB/W/23