GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED
COM.TEX/38
10 October 1984
Special Distribution

Textiles Committee

REPORT OF THE COMMITTEE MEETING HELD ON 4-5 SEPTEMBER 1984

Chairman: Mr. M.G. Mathur

1. The Textiles Committee held its fifth meeting under the 1981 Protocol of Extension from 4-5 September 1984. The agenda for the meeting was "Recent developments affecting international trade in textiles and clothing".

2. The agenda was adopted without comment.

3. The Chairman gave some background information on the events leading to the convening of the meeting. He said that on 9 August 1984, a group of representatives from developing countries, exporters of textiles and clothing, called on the office of the Director-General and delivered a statement which drew attention to two sets of measures contemplated by the United States. One involved countervailing duty petitions against textiles and clothing products from developing exporters and the other concerned country-of-origin regulations. The statement also requested that a special meeting of the Textiles Committee be urgently convened to examine these measures. On receipt of this request, and after consultation with interested delegations, it was decided that a meeting should be convened to provide an opportunity for an exchange of views. In inviting comments from the floor, he said that delegations might address both issues at the same time, or separately.

4. The representative of Mexico, speaking on behalf of developing countries, exporters of textiles and clothing, said that he felt it necessary to recall the essential points made during the Committee meeting held in January 1984, and the application since then of the additional criteria establishing "presumption of market disruption or threat thereof". During that meeting, the developing countries stated that the measures introduced by the United States in December 1983 violated commitments undertaken during the GATT Ministerial Meeting to resist protectionist pressures, to pursue measures aimed at liberalization of trade in textiles and clothing, and to adhere strictly to the rules of the MFA. The representative of the United States had assured the Committee that "notwithstanding the use of internal procedures, the MFA remained the governing framework within which the United States textile trade policy is conducted". Contrary to the assurances given, however, the application of the United States additional criteria had proved to be discriminatory in character, and the element of automaticity in applying the criteria had contributed to the large number of calls, which, as of 30 June 1984, had exceeded 100 calls on more than 20 developing suppliers.

45. The representative of Mexico said that the serious concern among the developing exporting countries had deepened and widened in the last two months because of two new measures contemplated by the United States. In the third week of July, countervailing duty petitions were filed on practically all textile and clothing products imported from developing countries and the United States authorities initiated investigations within 20 days of the filing of the petitions. On 3 August, new "Customs Regulations Amendments Relating to Textiles and Textile Products" were officially published, which would radically transform the existing law and practice on the rules of origin applicable to all textile products subject to the MFA. These measures were contemplated against the background of vigorous expansion in domestic consumption in the United States, and of imports from unrestrained sources increasing much faster than those from developing suppliers, and at a time when most developing countries were facing serious balance-of-payments and adjustment problems, falling commodity prices and high rates of interest.

6. He said that the fundamental legal aspects of the new additional measures should be viewed in the context of the basic objective of the MFA and the undertakings in paragraph 7(i) and 7(viii) of the Ministerial Declaration of November 1982. Both measures conflicted with Article 9:1 of the MFA which provided that participating countries should, as far as possible, refrain from taking additional trade measures which might have the effect of nullifying the objectives of the Arrangement. They also violated Paragraph 5 of the Protocol of Extension which stipulated that any serious problems of textile trade falling within the purview of the Arrangement should be resolved through consultations and negotiations conducted under the relevant provisions thereof. Furthermore, the United States actions also violated the provisions of Paragraph 23 of the Protocol of Extension which stated that all participants should refrain from taking measures outside the MFA before exhausting all the relief measures provided in the MFA.

7. Referring specifically to the Rules of Origin Amendments, he said that the unilateral imposition of additional requirements by the United States would blatantly ignore the procedures specifically laid down in Article 8 of the MFA and Paragraph 14 of the Protocol of Extension concerning problems of circumvention such as origin fraud or trans-shipment. Both the MFA and the bilateral agreements negotiated under it referred to origin of products. This could only be interpreted against the background of certain known standards based on internationally accepted conventions, administrative and trade practices as well as judicial decisions. This framework of rules and understandings grew over many years and was in existence when the MFA and bilateral agreements were signed. Many aspects of the new amendments were still unclear. The determination of origin would rest in the hands of individual customs officials, guided by vague criteria. The net result would be a situation of uncertainty, confusion, disruption and chaos. By attempting through these new regulations to radically and abruptly alter the established ground rules, the United States was in effect frustrating legitimate trade and thereby setting a dangerous precedent which if applied in other sectors could seriously threaten the entire international trading system. He urged the Committee to recommend that the Regulations be withdrawn by the United States.

8. On the Countervailing Duty petitions filed against imports of textile products from thirteen developing countries, the representative of Mexico said that these petitions were of an unprecedented scope and intensity as they covered practically all textile and clothing items exported by these thirteen countries, representing a substantial proportion of their export earnings. They were of a discriminatory nature as they were directed against developing countries which did not qualify, under the United States legislation, for an injury text. When deciding whether a petition was legally sufficient, the United States authorities should include in its consideration the compatibility of the investigations with the commitments undertaken by the United States in international agreements, both multilateral and bilateral. If, as a result of the investigation, the United States authorities reached an affirmative final determination and countervailing duties were imposed, they would constitute trade restrictions additional to those imposed under the MFA. Even if no affirmative determination leading to the imposition of countervailing duties was reached, the investigations were in themselves impediments to trade, in view of the harassment, the detering effects and the costs involved.

9. The representative of Mexico concluded his statement by referring to the press statement, which was annexed to the letter of 9 August sent to the Director-General of GATT by the Group of Developing Exporters, condemning the United States measures. He said that despite the expression of serious concern by the Group, the United States authorities had accepted the countervailing duty petitions and initiated the investigations accordingly. Furthermore, only very limited exemptions from the application of new country of origin regulations were decided which were of little or no use to exporting countries and which did not address the substance of the problem. Finally, he said that these actions were designed to harass and restrain legitimate trade for domestic political reasons. In such circumstances, the operation of the MFA was being seriously undermined, the international trading environment was being subjected to further deterioration, and the timely implementation of the GATT Work Programme would be impaired. The text of his statement is attached in Annex 1.

10. The representative of the United States said that the new Interim Customs Regulations on rules-of-origin were developed "to prevent circumvention or frustration of multilateral and bilateral agreements to which the United States is a party and to facilitate efficient and equitable administration of the United States Textile Import Program". While designed primarily to clarify and codify the regulations pertaining to "substantial transformation", the new rules also provided explicit regulations to define the term "date of exportation" as used in the United States bilateral agreements and restraint actions; procedures for entry of quota exempt shipments and shipments in bonded warehouses, in transit, or in free trade zones.

11. He said that, as noted by the representative of Mexico, subsequent to the publication of these Interim Regulations on 23 August 1984, an exception was made for those products which were sold to United States importers prior to 3 August 1984. The effective date for these products would be 31 October 1984. There was a 60-day period for comments and if the measures taken were considered to affect the terms of bilateral agreements, the United States was ready and willing to enter into bilateral consultations with any participant which considered itself so affected. He said that the proposed changes in the United States Customs Regulations were taken to address serious loopholes which allowed evasion of the intent of bilateral agreements and that the United States could not agree that they were contrary to the MFA.

12. On countervailing duty petitions, the representative of the United States said that they were the result of initiatives by industry and labour groups in response to what they considered to be subsidization by the thirteen countries concerned. The United States authorities had found the petitions legally sufficient and had begun investigations. Unless the time were extended, preliminary findings of these investigations would be presented between 12 October and 22 October 1984. If the preliminary determination was that subsidies were being provided, then the United States authorities would estimate the net subsidy, order the suspension or liquidation of entries, and order posting of bond or other security equal to the estimated net subsidy. If there was a final determination of subsidies, then a countervailing duty order would be issued between 26 December 1984 and 5 January 1985.

13. He said that he did not agree that utilization of the countervailing duty provisions of United States law contravened in any way the United States obligations under the MFA. These procedures were not safeguard measures but rather a response to certain trade practises of other countries. Their utilization was fully consistent with Article 1:6 of the MFA. They were not a trade measure which nullified the objective of the MFA in the sense of Article 9 of the Arrangement, or which contravened the provision of Paragraph 23 of the Protocol. The text of the statement by the representative of the United States is attached in Annex 2.

14. The statement by the representative of Mexico was endorsed by all the representatives from developing exporting countries whose detailed statements are summarized below. In addition, the representatives of Brazil, Korea, Portugal on behalf of Macao, Romania and Trinidad and Tobago also spoke essentially to express support of the views of the representative of Mexico.

15. The representative of Indonesia, speaking on behalf of the five ASEAN countries, parties to the MFA, said that they were gravely concerned with the twin set of protective actions taken by the United States aiming at the textiles and clothing trade of developing countries. He wished to place on record that ASEAN protested the introduction of these new protectionist measures. He said that bilateral agreements were supposed to provide

guaranteed security of access for exporting countries in exchange for agreement to have their exports restrained. The new measures disturbed any balance of mutual interests that might have been concluded in bilateral agreements. He could not see how the new measures could further the economic and social development of developing countries, secure a substantial increase in their export earnings and provide scope for a greater share for them in world trade in textile products.

16. He said that the countervailing duty petitions of extraordinarily broad product coverage targeted against a number of small suppliers were simply harassment with discriminatory protectionist intentions perpetrated under the guise of seeking a legal remedy. The absence of the injury test was significant in terms of Article VI of the General Agreement, and the initiation of the investigations by themselves could cause market uncertainty and disruption. Furthermore, the possible imposition of additional restrictions arising from the countervailing procedures was tantamount to placing the exports of these suppliers which were already subject to restrictions in double jeopardy. He urged the United States authorities to prevail upon the petitioners to withdraw these petitions. On the new regulations on country-of-origin, he said that they were unilateral amendments of bilateral agreements. The heavy documentary requirements arising from the change could be described as a non-tariff barrier virtually impossible to meet without disrupting the flow of trade. He concluded his statements by saying that the new United States measures could only exacerbate the already unsatisfactory state of affairs in textiles and clothing trade, especially when the GATT was engaged in serious work on matters arising from the Ministerial Declaration of 1982. Trade in textiles and clothing was an acid test of sincerity, resolve and political will to combat protectionism.

17. The representative of the Peoples' Republic of China said that the new criteria for "presumption of market disruption or threat thereof", the countervailing duty actions and the new rules-of-origin proclaimed by the United States were discriminatory actions designed to step up its trade protectionism and tighten restrictions on textiles. The United States had recently called China for a series of consultations on as many as twenty-one categories of textile products. All these developments would not only gravely impede normal trade but also threaten more than 100,000 jobs in employment and hundreds of factories in both production and delivery. China was firmly opposed to the implementation of the new regulations as this would erode the development of Sino-American bilateral trade. It called upon the United States Government to rescind the new regulations of country-of-origin and to terminate the countervailing investigations. It also hoped that the United States Government would strictly abide by the MFA and the relevant bilateral agreements and fulfil its commitments made at the Textiles Committee meeting held in January 1984.

18. The representative of Sri Lanka said that emergency meetings of the Committee appeared now to be more common than regular meetings and this phenomenon was probably a reflection of the deplorable and worsening situation in international trade in textiles. He said that the new rules-of-origin were objectionable as they were contrary to the MFA, to the United States bilateral restraint agreements and to the commitments undertaken in the Ministerial Declaration. The bilateral agreements supposedly conferred export control. As a result of the new regulations, the control passed out of the hands of the exporting country into the hands of individual customs officers. By varying the rules of origin, the access rights already granted were being further curtailed. By introducing new documentary requirements, the United States was changing the bilateral agreements unilaterally. The rules were ambiguous in that they did not state precisely what processes conferred origin and they left decisions to be made by customs officers. Such a situation would give rise to arbitrary and contradictory decisions which would not make for equitable administration. They were also contrary to accepted international business practices as they sought disclosure of confidential business information. They introduced a large grey area of uncertainty into the trade as entry of goods would be decided on an ad hoc basis. The exporter/supplier would not be able to guarantee delivery of goods as the documentary requirements might not be fulfilled due to non-availability of certain information. For the above reasons, he strongly urged that the Committee recommend that the regulations be withdrawn by the United States Government. The countervailing duty petitions were of an unparalleled intensity in that, for example, they covered all categories of textiles and apparel products imported by the United States from Sri Lanka in 1983. The petitions were discriminatory as they were filed against only countries which were not signatories to the Subsidies Code. He believed that the investigations were in conflict with Article 9 of the MFA, and Paragraphs 5 and 23 of the Protocol of Extension. The absence of an injury proceeding was also a violation of Article VI of the GATT, representing a nullification or impairment of Sri Lanka's rights under the GATT. He could not accept a conditional application of the MFN clause.

19. The representative of Peru made specific reference to the problems of external debt, high interest rates and balance-of-payments difficulties facing developing countries and said that the new type of United States protective measures were highly detrimental to the economies of those countries. They adversely affected the trade balance of Peru and made it impossible for Peru to import the goods necessary for its development and growth. The countervailing measures applied practically to all Peru's exports of textiles which accounted for a value of about $60 million. Both the rules-of-origin and the countervailing duty actions were discriminatory; they violated the provisions of the MFA and the undertaking given by the United States to comply with the Ministerial Declaration of 1982 in the matter of resisting protectionism and should be withdrawn. The representative of Argentina made a similar statement.

20. The representative of the United Kingdom on behalf of Hong Kong said that there appeared to be developing a most unfortunate trend for the unilateral introduction of restrictive measures to appease the United States textiles industry. This type of action weakened the credibility of the whole framework of the MFA and there was no assurance that such attitudes would not in due course result in similarly restrictive measures in other sectors of trade. He said that the proposed new Customs Regulations offended against various parts of the MFA, particularly Articles 1, 8 and 9, the 1981 Protocol, particularly Paragraphs 2, 5, 14, 16 and 23, as well as various parts of the relevant bilateral agreements. The fundamental argument, however, was that exports of textiles to the United States were governed by the MFA and the bilateral agreement, and the practices prevailing at the time the current agreement was negotiated. There was thus a framework of rules for the textile trade within which both signatories to the bilateral agreement, and individual companies, could plan and on which they could rely for the orderly and equitable development of their trade as provided under Article 1 of the MFA. It followed that any significant change to the rules governing this trade had to be by mutual agreement. If the United States had legitimate concerns over the implementation of bilateral agreements or about circumvention, then the appropriate avenue for dealing with such concerns was to seek consultations with a view to arriving at agreed solutions. However, he was of the view that the real intention behind the Regulations was not so much to avoid circumvention of the existing rules as to change those rules.

21. He stressed that if the United States Regulations were implemented, the changes which would result would be significant and would apply to all countries involved in textiles trade. In future, entry of imports into the United States would be denied unless accompanied by a detailed declaration, giving information both difficult to obtain and commercially sensitive. The Regulations were vague and even the United States Administration itself appeared to be confused about their fundamental aspects. For example, there were conflicting indications by United States officials on the important question of whether the Regulations applied only to MFA textiles, or if they covered some non-MFA textiles as well. It was, however, certain that, by changing the rules of origin, the Regulations would change, among other things, the coverage of categories of textiles products subject to quota. One specific change was that the Regulations specified four processes which would on their own not qualify as substantial transformation. In the case of Hong Kong, this meant that a majority of exports of piece-knitted garmets and finished fabrics would be likely in future not to be regarded as of Hong Kong origin by the United States, a serious change over the position both now and when the bilateral agreement was negotiated. For the various resons stated above, he said that the Regulations should be rescinded. On countervailing duty petitions, he said that although Hong Kong was not one of the targets, it was clear from the timing of such petitions, their number, their identical nature and the fact that they had been directed only against non-signatories of the subsidies code, that they were a deliberate device by protectionist elements within the United States to harass and disrupt legitimate trade. The Committee should urge the United States not to allow itself to be put in a position that was inconsistent with its international obligations.

22. The representative of Colombia said that he could not understand why the United States introduced protective measures at a time when economic recovery was going in full swing. He also could not understand what significance there was of talking about a new round of negotiations to liberalize trade when in fact a protectionist campaign was mounted aiming at the exports of textiles and clothing from developing countries. He asked why the United States supported the carrying out of a study on textiles, which aimed at greater liberalization of trade in that sector. He asked what was the significance of the United States decision to postpone the rules-of-origin measures until 31 October for contracts signed before 3 August so as to meet the demand for the Christmas season. Would it not mean that the United States industry was not self-sufficient and that imports from developing countries were needed. Colombia was facing a dilemma in respect of countervailing duty actions. It was now subjected to regular investigations without being able to invoke Article VI of the GATT or the subsidies code. But if it tried to sign the subsidies code, then it would have to agree to certain requirements imposed by the United States. In conclusion, he said that he would reserve all his GATT rights pending the withdrawal of the measures by the United States.

23. The representative of Canada said that he would confine his remarks only to the regulations proposed by the United States on the rules-of-origin for imports of textiles and clothing products. Canada recognised the right and the need for governments to take measures, if necessary, to prevent circumvention and frustration of bilateral or multilateral agreements. But such measures should be confined in their scope and should avoid impinging on trade which could not be considered to be causing market disruption or where there was no reason to believe that circumvention had been occurring. While the Canadian authorities had not completed the study on the proposed regulations, they were concerned that the regulations might have a far-reaching impact, exceeding the admittedly legitimate objective of preventing circumvention of existing arrangements. The burdensome documentary requirements would be difficult to square with the provisions of Articles VIII and IX of GATT. Country-of-origin requirements, if too rigidly interpreted, could have the effect of broadening the coverage of existing United States arrangements to goods which heretofore had been considered products of Canada. There was also a danger of diversion of distressed shipments to the Canadian market and disruption of Canada's existing trade pattern. In view of these concerns, the representative of Canada said that he would urge the United States authorities to delay implementation of the proposed regulations to provide a full opportunity for assessing their implications for trade. In this respect, he welcomed the decision to exempt orders made prior to 3 August. However, the regulations were scheduled to go into effect in less than sixty hours. The views of this meeting should therefore be forwarded to the United States Administration immediately for their full and sympathetic consideration.

24. The representative of Japan said that the United States regulations would place exporters under new obligations which were complicated and hard to fulfil. The wording of the regulations seemed to leave a lot to the discretion of customs officials. Thus there was a risk that they might be operated arbitrarily, eventually becoming a non-tariff barrier. These regulations therefore clashed with the spirit of the MFA and went against Article VIII of the GATT. The new criteria would forceably change patterns of production and trade in textiles among countries, particularly among Asian countries. The Government of Japan was concerned about the adverse effects of the new regulations in world trade in textiles and asked the United States to postpone and reconsider the regulations.

25. The representative of the EEC said that he would confine himself to discussing the rules-of-origin regulations which caused serious concern. These rules were very complex. They would fundamentally modify present rules and practices for determining origin and would have considerable effect on exports to the United States and on world trade. The Community was particularly worried by the set of formalities which could pose excessive commercial and administrative restraints beyond what was necessary to combat fraud and circumvention. The methods chosen were also inappropriate, as the MFA contained provisions to deal with such problems. Protectionism tended to be contagious. Leading trade partners had particular responsibilities as regards the commitments which they had entered into. In this case, both the short-term as well as long-term consequences of these measures had not been thoroughly weighed. The announcement of the measures themselves was a surprise, and the short period of time between the date of announcement and the date of planned implementation was insufficient given their complexity. It was the intention of the Community to request bilateral consultations with the United States. It also requested that the effective date of implementation of the measures should take account of these consultations. In conclusion, he said that he would like to underline a link between what had been said in the present meeting and the commitments entered into earlier at a higher political level, the commitments to resist protectionist pressures and to reverse the present protectionist trends. He said that in reporting to his authorities, the representative of the United States should not forget mentioning this link.

26. The representative of Sweden, speaking on behalf of Finland, Norway and Sweden, said that the United States measures were announced only recently and that the short time had not given him sufficient opportunity to study them and to come to final conclusions as to what degree they would affect the textiles trade of individual countries or textiles trade as a whole. His preliminary view was that these measures might have considerable affect on trade. He said that at a time when work in the field of textiles was going on in several fora within GATT, it would be highly unfortunate if actions were to be taken which would imply that further difficulties were added to those already existing in this sector. He suggested that the United States Government should postpone the implementation of the rules-of-origin so that interested parties would be afforded time to study these measures and to hold the necessary consultations.

27. The representative of India pointed out the specific provisions in the MFA, in the 1981 Protocol of Extension and in bilateral agreements for dealing with problems relating to circumvention of the Arrangement, and said that all matters arising from the implementation or operation of the Arrangement had to be resolved by mutual consultations. The proposed regulations by the United States sought to impose unilateral, additional and stringent obligations on exporters. These regulations, if implemented, would create serious obstacles and uncertainties to trade. He urged that the Committee should recommend that the United States Government withdraw the proposed regulations. He said that the textiles sector was of great importance to the developing countries' trade and development. The GATT was currently engaged in an exercise of fulfilling the mandates given by the ministers for the working out of modalities for the liberalization of trade in textiles. The United States proposed regulations not only cast a shadow on the prospects of fruitful outcome to this exercise, but also seriously affected the whole GATT work programme and thereby seriously eroded the creditability of GATT itself.

28. The representative of Yugoslavia said that the new United States regulations required exporters of textiles and clothing to provide details on the products, the manufacturing process, the materials used, the costs, the identification by country and other information which was much more than Yugoslavia would ask from United States exporters of, for example, equipment for nuclear power stations. To meet these documentary requirements would not only increase the complexity of import formalities but also the cost of services. These extensive requirements could be recognised as non-tariff obstacles to the import of products under the MFA. To implement the regulations would require additional inspectors, more lawyers, papers, offices, etc. All these costs would have to be paid by developing exporting countries. The period of the year when these regulations were supposed to take effect and the short period of time available to governments and business circles to acquaint themselves with these regulations would highly disrupt trade, bearing in mind that trade in textiles and clothing is of a seasonal nature.

29. The representative of Pakistan said that it was significant that the Textiles Committee had to meet twice in emergency sessions in a period of less than one year. He said that the United States delivered a very tough régime for textiles last December. After a period of less than ten months, it had delivered a tough customs régime. Developing exporters of textiles were quite used to sailing in rough waters, but perhaps they were now faced with a deluge or a flood.

30. He said that suddenly, after about half a century, the United States authorities realized that their rules-of-origin were neither clear nor definitive and needed substantial transformation and so they had substantially transformed the rules with protectionist intent. No wonder these developments had received fairly wide adverse reactions in the press and the public. He read out a quotation from the Wall Street Journal of 14 August, to the effect that import protection was almost always a rotten

idea but some trade barriers were more pernicious than others. Tough rules on textiles imports announced by the United States Treasury fell into the worst case category. They were bizarre enough to match the most creative fashion of the rag trade itself. He said that it was perhaps for the first time in the history of international trade that rules-of-origin had been used for safeguard measures, ignoring the fact that textiles was an industry which involved various processes of manufacturing always undertaken by different companies in different countries. Somebody would weave the cloth, somebody would spin the yarn, another would do the stitching and yet another would do the packing. To illustrate the trade effect of the United States measures, the representative of Pakistan said that according to the United States press, the 7-week postponement of the United States measures affected trade in the order of US$500 million. On that basis, it could be calculated that total trade affected in a year would be US$4 billion, much more than the total of the grey area measures which were roughly calculated to be in the magnitude of about US$2 billion. The fact that the United States announcement repeatedly said that they were not exhaustive could only be interpreted to mean that the rules could be further toughened up. The new rules to be applied would be like imposing a domestic content requirement on all the other countries. This was a very serious matter. If it were a question of simple circumvention, or a question of administering bilateral agreements, then there were sufficient existing rules and regulations to address these problems. The United States measures appeared to be introducing additional measures to regulate international trade in textiles as if the MFA, Article 3 actions, and the concept of presumption of market disruption were not tough enough.

31. On countervailing duty actions, the representative of Pakistan said that his own experience in this field supported a point repeatedly made in the Sub-Group on Protective Measures and in the Special Sessions of the GATT Council, that some instruments designed to introduce discipline were being gradually turned into protective measures. It was difficult to understand how certain products from Pakistan could have caused injury in a year of recovery when the same products had not done so in a year of recession. There was a question of double injury. These products were already subject to restraints. Furthermore, domestic enquiry processes were getting increasingly politicised and exporting countries found that they could not place full confidence in these enquiry processes and perhaps would have to resort to the GATT dispute settlement procedures. Finally, he said that the GATT autumn session was probably the last formal session devoted to the GATT work programme in which most of the ministerial decisions were supposed to be finalized and the GATT contracting parties were to come up with a programme of trade liberalization. The more one looked at recent developments, however, the more one was struck by the fact that 1984 was perhaps the kind of year for international trade which George Orwell had envisaged for humanity at large.

32. The representative of Turkey said that he was disappointed at the imposition of the United States measures at the time when Turkey was engaged in a process of bilateral consultation with the United States regarding their request to restrain the exports of certain clothing items from Turkey. These measures would certainly not make it easier for Turkey to conclude such an agreement. As one of the 13 countries affected by the countervailing petitions, Turkey strongly felt that the petitions were totally incompatible with the fundamental principle of GATT, namely the Most Favoured Nation clause. He drew attention to Paragraph 3 of the decision of 28 November 1979 (document L/4905) which stated that "existing rights and benefits under the GATT of contracting parties not being parties to the [MTN] agreements, including those derived from Article I, are not affected by these agreements."

33. The representative of Egypt made special reference to the functions of the Textiles Committee as a body to supervise the operation of the MFA. He said that if this Committee met in emergency sessions and came out repeatedly with no promising solutions to the problems put before it, then the image of the Committee as well as the credibility of the MFA might be endangered. This could also affect the international trading discipline embodied in the GATT itself. He appealed to the Committee that it should discharge its functions in a manner that would preserve the integrity of the MFA and GATT.

34. The representative of Austria said that he was concerned about the increasing protectionist tendencies on the textiles and clothing sectors. He believed that the provisions in the MFA were sufficient to deal with the question of circumvention. He was also concerned about the possibility of trade diversion, affecting countries with a liberal import regime. He supported the request for a postponement of the application of the United States measures. He said that under the circumstances, this request was a modest and a fair one.

35. The representative of Poland made a short statement supporting the request to ask the United States government to reconsider its position on the issues.

36. The representative of Jamaica said that the effects of the United States measures on Jamaica was catastrophic at a time when Jamaica was trying to re-activate its economic recovery through activities in light manufacturing industries including textiles. These measures would adversely affect Jamaica's employment situation, its foreign exchange earnings as well as its investment plans. She said that the government of St. Lucia, a partner in the Caribbean Community, had asked to be associated with her remarks and concerns.

37. The representative of Switzerland said that it was surprising that the measures under discussion could be implemented by a government which rightly spoke in favour of free trade and trade liberalization. Many countries weaker than the United States economically had problems in keeping up their present system of free trade. Whether contracting parties would liberalize trade in various and partly new sectors would depend also to a large extent on how all parties fulfil their obligations under the MFA, which was an agreement with very delicate balance of rights and obligations and interests and burdens. He remained convinced that the United States government would do its utmost to postpone the implementation of the measures thereby giving the time required for consultations.

38. The representative of the United States said that he would like to make a few comments. First, he said that his delegation had listened very carefully to the points made by other delegations, and that he would be delighted to assure all members of the Committee that it would do its very best to relay these comments to Washington as soon as the outcome of the meeting was known. Secondly, he could assure the Committee that his government was ready and willing to consult with any countries which expressed the desire to do so. He noted in this regard the request of at least one country for such consultations. Finally, he made a reference to the general trade situation. He said that United States imports of textiles and clothing increased by 25 per cent in 1983. For the first 7 months of 1984, imports increased by 44 per cent. For the month of July alone, the increase was 61 per cent. Imports for the 12 month period ending July 1984 increased by 38 per cent. In terms of quantity, there was over 1 billion square yards equivalent imported in the United States in the month of July, 1984. Imports through July totalled over 6 billion square yards equivalent and the amount for the 12 month period ending July 1984 was over 9 billion square yards equivalent. In value terms, the United States imported over in US$ 9 billion of textiles and apparel in 1982; some US$10.6 billion in 1983; from January to June 1984, US$6.7 billion; and for the 12 month period ending June 1984, US$12 billion. He concluded by saying that these figures represented very substantial numbers and substantial increases. If people wished to take the view that the United States market was a closed market, then let them find another outlet for US$12 billion a year worth of textiles and apparel.

39. The representative of Mexico said that while he had no intention of replying to the comments just made by the representative for the United States, he would like to restore some balance into the issues by referring to a graph based on data given by the American Textiles Manufacturers Institute. The graph showed, in square yards equivalent, the import percentage changes in textiles and apparel into the United States from non-restricted sources and from developing exporters under the MFA. The graph suggested that the United States market was completely open for certain suppliers, but it was controlled and restricted for other suppliers. For instance, by comparing January 1984 with January 1983, the percentage increase of imports from developing suppliers members of MFA was about 40 per cent, the increase for non-restricted suppliers was 70 percent. In July 1984, the increase over July 1983 for imports from developing suppliers members of MFA was 20 per cent, as opposed to an increase of 95 per cent for non-restricted suppliers.

40. He said that he would like to draw attention to the serious worries and concerns of the group of developing exporting countries on the countervailing investigations. Two of the thirteen countries affected had no other forum than the Textiles Committee to make good their claims on their textiles export trade. He would not accept the idea or the inference that the Textiles Committee was not competent, or has no jurisdiction to discuss countervailing actions. Nor would he accept that the actions envisaged by the United States would be a legitimate method to ward off unfair competition. The Committee should keep in mind that the countervailing instrument was being used with a deliberate protectionist intention in mind. He suggested that the Textiles Surveillance Body might be entrusted with the task of examining the issue over a given period of time and be called upon to report to the Committee at a given date.

41. The Chairman concluded as follows[1]:

(i) The Textiles Committee considered the revised Customs Regulations announced by the United States to be implemented with effect from 7 September, and the countervailing investigations against thirteen countries on the entire range of their textile products, including the products already subject to quota restrictions.

(ii) The Textiles Committee noted the deep concerns that these developments would disrupt the international trade in textiles and clothing.

(iii) The Textiles Committee noted a common view that:

(a) the stated objectives of the interim regulations envisaged by the United States could or should be met through the existing provisions of the GATT, the MFA or the bilateral agreements;

(b) the United States should withdraw or at least postpone implementation of new rules of origin to enable holding of urgent bilateral or plurilateral consultations between the United States and concerned countries, with a view to finding appropriate solutions, consistent with the provisions of the GATT and the MFA, to any problems that may have given rise to the new US regulations;

(c) the matter of CVD actions should, as requested by exporting developing countries, be examined by the TSB in the light of Article 9 of the MFA and paragraph 23 of the 1981 Protocol, and the result of this examination should be considered by the Textiles Committee on 17 October.

(iv) The Textiles Committee agreed to keep these and related matters under consideration and to review the situation in the light of developments at its meeting on 17 October.

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[1]This has been circulated in COM.TEX/W/154/Rev.1

Embargoed until 4 September 1984, 15.30 hours (Geneva time)

STATEMENT ON BEHALF OF DEVELOPING COUNTRIES, EXPORTERS OF TEXTILES AND CLOTHING

1. Allow me first to thank you for having convened again, for the second time this year, an emergency meeting of the Textiles Committee. We also wish to thank all the participating countries, particularly the United States, for having agreed to meet, again at short notice, to review current developments under the 1981 Protocol extending the Arrangement Regarding International Trade in Textiles.

2. At its last meeting on January 19-20, the Committee decided to keep all matters covered at that session, and other relevant matters under review. I think, therefore, that it is justified first of all to recall essential points made at the January meeting and the application since then of the additional criteria establishing "presumption of market disruption or threat thereof". The developing countries, exporters of textiles and clothing made it clear that, in their view, the measures introduced in the United States in December 1983 violated commitments undertaken during the GATT Ministerial Meeting to resist protectionist pressures, to give the fullest consideration to the objectives of trade liberalization and expansion, to pursue measures aimed at liberalization of trade in textiles and clothing and to adhere strictly to the rules of the MFA. Developing countries also emphasized that the parties to the MFA had entered into firm commitments to regulate textiles trade on the basis of objectives and disciplines established under the Arrangement. The Protocol of 1981 has confirmed the conviction of the parties that any serious problem could be resolved through the discipline of Annex A and Articles 3 and 4 of the Arrangement. I should also like to recall that at the January meeting of the Textiles Committee, the representative of the United States concluded his statement by saying: "We remain committed to the MFA, and we intend fully to abide by our obligations under the MFA and our bilateral agreements". The Chairman of the Textiles Committee concluded the discussions by stating the following under point (7) "... The Committee also noted the statement by the United States delegation that notwithstanding the use of internal procedures, the MFA remained the governing framework within which the United States textile trade policy is conducted".

3. However, contrary to the assurances given at the January meeting of the Textiles Committee, the application, in practice, of the US additional criteria announced on the 16 December 1983, has proved to confirm the serious concerns expressed by the developing countries at that meeting of the Textiles Committee, in particular as regards the two following major issues:

(i) While a strictly literal reading of the United States' announcement appeared to suggest that the decision would be applicable to all suppliers including the developed countries, in practice the US actions taken under the additional criteria have so far been aimed almost entirely at imports from developing countries, including new entrants and small suppliers. Thus the discriminatory character of the restrictions imposed under the MFA has been reinforced by the way in which the US measures of December 1983 have been used to discriminate against the developing suppliers of textiles and clothing.

(ii) Although it was stated in the US announcement that if market disruption or threat thereof is not demonstrated, quotas will not be imposed, this has not hindered the Administration from making calls as soon as they have been triggered by the quantitative criteria. Indeed, this element of automaticity in applying the criteria has certainly contributed to the significant number of calls already made. As of 30 June 1984, the US has already issued more than 100 calls on more than 20 developing suppliers, affecting a wide range of textile and clothing products.

4. The serious concern among the developing exporting countries, at both the official level and among the producers and traders directly affected, caused by the automatic and discriminatory application of the December measures, deepened and widened considerably in the last two months because of the initiation of legal procedures concerning two additional sets of measures of a clearly protective nature, again principally directed against imports from developing countries. In the third week of July Countervailing Duty petitions were filed on practically all textile and clothing products imported from developing countries. The Department of Commerce initiated investigations

within 20 days of the filing of the petitions. On 3 August new Customs Regulation Amendments Relating to Textiles and Textile Products were officially published, which will radically transform the existing law and practice on the rules of origin applicable to all textile and clothing products subject to the Multifibre Arrangement.

5. The fundamental legal aspects of the new additional measures should be viewed in the context of the basic objectives of the MFA: "to achieve the expansion of trade, the reduction of barriers to such trade and the progressive liberalization of world trade in textile products...". These objectives were re-iterated in the 1981 Protocol of Extension, which under Paragraph 2 stated: "...a principal aim in the implementation of the Arrangement is to further the economic and social development of developing countries and to secure a substantial increase in their export earnings from textile products and to provide scope for a greater share for them in world trade in these products". It should also be recalled that the Contracting Parties, in their Ministerial Declaration of November 1982 undertook, under Paragraph 7 (i) "to make determined efforts to ensure that trade policies and measures are consistent with GATT principles and rules and to resist protectionist pressures in the formulation and implementation of national trade policy... and also to refrain from taking or maintaining any measures inconsistent with GATT and to make determined efforts to avoid measures which would limit or distort international trade" and in paragraph 7 (viii) "to examine ways and means of, and to pursue measures aimed at liberalizing trade in textiles and clothing, including the eventual application of the General Agreement, after the expiry of the 1981 Protocol extending the Arrangement Regarding International Trade in Textiles, it being understood that in the interim the parties to the Arrangement shall adhere strictly to its rules".

6. Before examining in more detail the basic legal aspects and the implications of these two additional sets of protective measures, I should like to highlight a few facts of the economic setting relevant to the examination of the protective measures which have been taken. It has to be admitted that there was a strong rise of US imports of textiles and clothing during the course of 1983 and the first half of 1984 in percentages, i.e., in relative terms. This, however, can hardly be considered a sufficient

justification for the imposition of new restrictive measures, violating the letter and the spirit of the MFA and of the Protocol of Extension, for the following reasons: (i) The base period to which these comparisons refer, namely 1982, was a period in which the level of imports was quite depressed. In fact, taking a longer-term perspective it is worth noting that between 1973 amd 1982 the level of total imports actually declined in volume by 5 per cent while consumer expenditure on clothing had expanded by more than 40 per cent in real terms; (ii) Even if in relative terms total imports did increase faster than consumption in the second half of 1983 and the first half of 1984, in absolute terms - and this is a much more relevant indicator - the bulk of the vigourous expansion in consumption continued to be covered from domestic production. Therefore, the over-emphasis on import growth in relative terms as an argument for the imposition of protective measures can be quite misleading.

7. Furthermore, it has to be emphasized that in 1984, to an even greater extent than in the preceding years, the volume of imports from the developing MFA suppliers have increased much less rapidly than those from non-restricted sources. During the first seven months of 1984, as compared with the corresponding period of 1983, US imports of textiles and clothing from the non-restricted suppliers have risen by 80 per cent (in square yard equivalent) at least twice more rapidly than imports from the developing MFA suppliers. The growing discrepancy between these two growth rates certainly reflects the discriminatory nature of the trade measures directed against imports from developing countries.

8. A more general observation has also to be made. If in a period of slow or stagnating consumption, like in the period prior to the extension of the MFA, a rise in imports was considered an element relevant to the recurrence or exacerbation of a situation of market disruption in a period of buoyant demand at least one could expect that the principles and rules of the MFA would be respected. The more so if one considers the serious balance-of-payments and domestic adjustment problems faced by most developing countries reflecting, inter alia, falling commodity prices and high rates of interest.

9. Now, Mr. Chairman, I would like to examine, in more detail, the two additional sets of protective measures in the light of commitments undertaken by the United States in international agreements. The Customs Regulations Amendments Relating to Textiles and Textile Products dealing with the Rules of Origin as well as the investigations on the Countervailing Duty petitions, conflict with Article 9:1 of the MFA which states "In view of the safeguards provided for in this Arrangement the participating countries shall, as far as possible, refrain from taking additional trade measures which may have the effect of nullifying the objectives of this Arrangement". They also violate the provisions of Paragraph 5 of the Protocol of Extension which stipulates: "It was agreed that any serious problems of textile trade falling within the purview of the Arrangement should be resolved through consultations and negotiations conducted under the relevant provisions thereof". These two sets of measures are additional trade restrictions which have the effect of nullifying the objectives of the Arrangement, and which, by virtue of Article 9 of the Arrangement, importing countries are obliged to refrain from taking. In this regard, it is noted that Paragraph 23 of the 1981 Protocol of Extension gives explicit assurances concerning the implementation of the Arrangement, that: "All participants should refrain from taking measures on textiles covered by the MFA, outside the provisions therein, before exhausting all the relief measures provided in the MFA". Such actions by the United States represent a flagrant violation of these assurances.

10. Purportedly, the Rules of Origin Amendments aim at circumvention. However, cases of circumvention, e.g., origin fraud or transhipment, are problems of enforcement for which legal provisions already exist in Article 8 of the Arrangement; these were further elaborated in Paragraph 14 of the Protocol of Extension and in the bilateral Agreements. The unilateral imposition of additional requirements on Rules of Origin blatantly ignore the procedures specifically laid down for such matters. It follows, therefore, that circumvention is only used as an excuse for this action, which can therefore only be interpreted as being designed to seriously damage legitimate trade.

11. Both the MFA and the bilateral agreements made under it refer to origin of products. This can only be interpreted against the background of certain known standards based on internationally accepted conventions, administrative and trade practices as well as judicial decisions. Indeed these regulations purport to reverse a quite specific chain of US court rulings, the sense of

which was expressly confirmed in the US Federal Court of Appeal as recently as 21 August 1984. This framework of rules and understandings has grown up over many years and was in existence at the time that the MFA and bilaterals were signed and during the life of those arrangements up to the present. By attempting through these unilateral Country of Origin Regulations, radically and abruptly to alter these ground rules, the US is in effect frustrating legitimate trade, thereby undermining the operation of the MFA and the bilaterals and causing a further deterioration in the international trading environment..

12. Many aspects of the Country of Origin Regulations, as published, are unclear. The authority for the determination of origin will rest in the hands of individual customs officials, guided only by vague criteria and such information as can be obtained from import declarations. The net result of this will be a situation of uncertainty, confusion, disruption and chaos. The effect of the regulations on trade in the textiles sector is likely to be devastating.

13. While legally infringing the existing rules concerning textiles and clothing under the MFA, the Protocol of Extension, the Bilateral Agreements and the Ministerial Declaration, the unilateral new Rules of Origin represent a dangerous precedent which if applied in other sectors could seriously threaten the entire international trading system.

14. We therefore urge the Textiles Committee to recommend that the Regulations be withdrawn by the US Government.

15. The Countervailing Duty petitions filed against imports of textile and textile products from 13 developing countries were of an unprecedented scope and intensity, covering practically all textile and clothing items exported by 13 developing countries, representing a substantial proportion of their export earnings. They were obviously another reflection of the strong and increased protectionist pressures exerted by the US textile and clothing industries, translated into additional protective measures since December 1983.

16. As with the case of Country of Origin regulations, the investigations which followed the filing of the countervailing duty petitions are again in conflict with Article 9 of the MFA, with the Paragraphs 5 and 23 of the

Protocol of Extension. They also infringe upon the standstill commitments taken in paragraph 7 (i) of the Ministerial Declaration. In this context, when deciding whether a petition, once filed, is legally sufficient it should include in its considerations the compatibility of the investigations with the commitments undertaken by the United States in international agreements, both multilateral and bilateral.

17. Even if the Department of Commerce does not reach an affirmative determination leading to the imposition of countervailing duties, the investigations are in themselves impediments to trade, in view of the harassment, deterring effects and costs involved. In this case, these impediments are of an even more serious nature given the scope and intensity of the measures envisaged, already referred to.

18. If, as a result of the investigations, the Commerce Department reaches an affirmative final determination and countervailing duties are imposed, they would constitute trade restrictions additional to those imposed under the MFA. Thus, for the products already restricted under the MFA the exports of the developing countries would be doubly jeopardized.

19. You will recall, Mr. Chairman, that in the press statement which was annexed to the letter of 9 August, sent to you by the Group of Developing Exporters requesting this special meeting of the Textiles Committee, the Group condemned these measures as discriminatory and designed to harass and restrain legitimate trade for domestic political reasons. It called on the United States authorities to resist the countervailing duty petitions, to withhold implementation of country of origin regulations and to afford adequate opportunity for prior bilateral consultations with affected trading partners, with a view to seeking satisfactory solutions to such problems as might exist.

20. Despite the expression of such concerns by the Group, the United States authorities have accepted the countervailing duty petitions and initiated the investigations accordingly. Furthermore, only very limited exemptions from the application of new country of origin regulations were decided, which are of little or no use to exporting countries and in no way address the substance of the problem.

21. These actions were taken simultaneously during a period of intense political pressures in the United States. Moreover, in the case of the

Countervailing Duty investigations, they are of a discriminatory nature given the fact that they are directed against developing countries which do not qualify, under the US legislation, for an injury test. The situation, as described, clearly reflects politically motivated harassment of trade.

22. In these circumstances, Mr. Chairman, the operation of the MFA is being seriously undermined, the international trading environment is being further deteriorated, and the timely implementation of the GATT Work Programme will be impaired.

U.S. STATEMENT

I. INTERIM CUSTOMS REGULATIONS

As stated in the Federal Register Notice, the new interim regulations were developed "to prevent circumvention or frustration of multilateral and bilateral agreements to which the U.S. is a party and to facilitate efficient and equitable administration of the U.S. Textile Import Program". As such, these interim regulations stem from the recommendation of a special White House task force which was formed in 1983 to address these and other issues and they are directly responsive to an Executive Order of 9 May 1984.

While designed primarily to clarify and codify the regulations pertaining to "substantial transformation", the new rules also provide explicit regulations to define: the term "date of exportation" as used in U.S. bilateral agreements and restraint actions; procedures for entry of quota exempt shipments and shipments which have been stored in warehouses or free trade zones; procedures for handling goods which are transiting the United States in bond.

As noted by Mr. Delgado, subsequent to the publication of these interim regulations (on 23 August) an exception was made for those products which were sold to (i.e. subject to a binding commitment by) a U.S. importer prior to 3 August 1984. The effective date for these products will be 31 October 1984.

All participants have the opportunity to comment on the new interim regulations on rules of origin during the sixty-day comment period and the U.S. assumes that those directly concerned will do so. If the measures taken are considered to affect the terms of our bilateral agreements the U.S. is ready and willing to enter into bilateral consultations with any participant which considers itself so affected.

Thus the United States can not agree that the proposed changes in U.S. Customs Regulations are contrary to the MFA. They were taken to address what the U.S. Government considered to be serious loopholes which allow evasion of the intent of its bilateral agreements.

II. COUNTERVAILING DUTY PETITIONS

The Countervailing duty petitions, on the other hand, are the result of initiatives by industry and labour groups in response to what they consider to be subsidization by the thirteen countries concerned. The U.S. Department of Commerce has found the petitions to be in accord with the U.S. legal requirements for such petitions and has begun investigations of the allegations contained therein. Unless the time is extended, which it can be in extraordinary complicated cases, the Department of Commerce will present its preliminary findings in these cases within eighty-five days after the petitions were filed, or between 12 October and 22 October 1984. If the preliminary determination is that subsidies are being provided, Commerce will estimate the net subsidy, order the suspension of liquidation of entries, and order posting of bond or other security equal to the estimated net subsidy. All of this would of course be published in the U.S. Federal Register.

If there is a final determination of subsidies, a countervailing duty order would then be issued within seventy-five days after the preliminary determination (between 26 December 1984 and 5 January 1985).

The U.S. does not agree that utilization of the countervailing duty provisions of U.S. law by U.S. industry and/or labour groups contravenes in any way our obligations under the MFA. CVD procedures are not safeguard measures but rather a response to certain trade practices of other countries. Their utilization is fully consistent with Article 1:6 of the MFA, and in our view they are not a trade measure which nullifies the objectives of the MFA in the sense of Article 9 of that arrangement, or which contravenes the provisions of paragraph 23 of the Protocol.