

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
COM.TEX/SB/1898*
19 May 1994
Special Distribution

(94-0787)

Textiles Surveillance Body

Original: English

ARRANGEMENT REGARDING INTERNATIONAL TRADE IN TEXTILES

Notification under Articles 7 and 8

Bilateral Agreement between the United States and Fiji

The Textiles Surveillance Body received a notification from the United States of a bilateral agreement concluded with Fiji for the period 1 January 1993 to 31 December 1994. This notification was made pursuant to a request made by the Textiles Committee that agreements concluded with non-participating countries be notified.¹

The TSB agreed to forward the text of the notification to participating countries for their information.

¹The previous agreement is contained in COM.TEX/SB/1673.

*English only/Anglais seulement/Inglés solamente.

EMBASSY OF THE UNITED STATES OF AMERICA

Note No. 83

The Embassy of the United States of America presents its compliments to the Government of the Republic of Fiji and has the honour to refer to discussions between representatives of the Government of the Republic of Fiji and the Government of the United States held in Washington on 27-28 January 1993, concerning exports of cotton and man-made fibre textiles and textile products of Fiji exported to the United States. As a result of these and subsequent discussions, the Embassy, on behalf of the Government of the United States, proposes the following bilateral agreement concerning trade in certain apparel products between the United States and the Republic of Fiji (hereinafter referred to as the Agreement).

AGREEMENT TERM

1. The term of this Agreement will be the period from 1 January 1993 through 31 December 1994. Each "agreement period" or "agreement year" shall be a 12-month period from 1 January of a given year to 31 December of the same year.

COVERAGE OF AGREEMENT AND CLASSIFICATION BY FIBRE

2. The textiles and textile products covered by this Agreement are those summarized in Annex A. The system of categories and the rates of conversion into square meters equivalent (SME) listed in Annex A shall apply in implementing this Agreement.

3. (A) Tops, yarn, piece goods, made-up articles, garments and other textile manufactured products (being products which derive their chief characteristics from their textile components) of cotton, wool, man-made fibres, silk blends, non-cotton vegetable fibres, or blends thereof, in which any or all of these fibres in combination represent the chief weight of the product, are subject to this Agreement. Components of an article which are not considered relevant to the classification under the general rules of interpretation or the legal notes to Section XI of the harmonized system are likewise to be disregarded here.

- (B) For the purpose of this Agreement, textile products covered by sub-paragraph (A) above shall be classified as:

- I. Man-made fibre textiles, if the product is in chief weight of man-made fibres, unless:

- (a) The product is knitted or crocheted apparel in which wool equals or exceeds 23 per cent by weight of all fibres, in which case the product will be a wool textile; or
- (b) the product is apparel, not knitted or crocheted, in which wool equals or exceeds 36 per cent by weight of all fibres; in which case the product will be a wool textile;

- (c) the product is a woven fabric in which wool equals or exceeds 36 per cent by weight of all fibres, in which case the product will be a wool textile.
 - II. Cotton textiles, if not covered by (I) above and if the product is in chief weight of cotton, unless the product is a woven fabric in which wool equals or exceeds 36 per cent by weight of all fibres, in which case the product will be a wool textile.
4. Commencing with the first agreement period and during each subsequent term of this Agreement, the Government of Fiji shall limit exports to the United States of cotton and man-made fibre textiles and textile products of Fiji to the specific limits set out in Annex B, as such specific limits may be adjusted in accordance with Paragraph 5.

FLEXIBILITY ADJUSTMENTS

- 5. (A) I. The extent to which any specific limit set out in Annex B may be exceeded in any agreement period by carry forward (borrowing a portion of the corresponding specific limit from the succeeding agreement period) and/or carry over (the use of any unused yardage (shortfall) of the corresponding specific limit for the previous agreement period) is 11 per cent, of which carry forward shall not constitute more than 6 per cent.
- II. No carry over shall be available for application in the first agreement period. No carry forward shall be available for application in the final agreement period.
- (B) For the purpose of the Agreement, a shortfall occurs when exports of textiles or textile products of Fiji to the United States during any agreement period are below any specific limit as set out in Annex B.
- (C) The Government of the Republic of Fiji will notify the Government of the United States when it wishes to use unused meterage (shortfall) available in categories for carry over, subject to the provisions set out above. However, the Government of the United States may supply adjustments under this section to any specific limit whenever that adjustment appears appropriate to facilitate the flow of trade and the sound administration of the Agreement. To the extent such adjustments are actually utilized, they will be implemented by means of carry over and carry forward, in that order. Any unused carry forward will be re-credited to the following period's limit. This procedure will not prejudice the outcome of any consultations that may be held between our governments concerning the amounts of available carry over and carry forward.

OVERSHIPMENT CHARGES

- 6. (A) Products of Fiji shipped in excess of authorized limits in any agreement period may be denied entry into the United States. Any such shipment denied entry may be permitted into the United States and charged to the applicable limit in the succeeding agreement period.
- (B) Products of Fiji shipped in excess of applicable limit in any agreement period will, if allowed entry into the United States during that agreement period, be charged to the applicable limit in the succeeding agreement period.

- (C) Any action taken pursuant to sub-paragraph 6(A) and 6(B) above will not prejudice the rights of the other side regarding consultations.

SPACING PROVISIONS

7. The Government of the Republic of Fiji shall use its best efforts to space exports of its products to the United States within each category evenly throughout each agreement period, taking into consideration normal seasonal factors.

UNITED STATES ASSISTANCE IN IMPLEMENTATION OF THE LIMITATION PROVISIONS

8. The Government of the Republic of Fiji shall administer its export control system under the Agreement. The Government of the United States may assist the Government of the Republic of Fiji in implementing the limitation provisions of this Agreement by controlling, by the date of export, imports of textiles and textile products covered by this Agreement.

EXCHANGE OF INFORMATION

9. Subject to domestic laws, at the request of the other government, each government agrees to supply any information in its possession reasonably believed to be necessary for the enforcement of this Agreement.

EXCHANGE OF DATA

10. (A) The Government of the United States shall promptly supply the Government of the Republic of Fiji with data on monthly imports into the United States.
- (B) The Government of the Republic of Fiji shall promptly supply the Government of the United States with data on monthly exports of Fiji to the United States of any category subject to limits as set out in Annex B.

COOPERATION IN THE PREVENTION OF CIRCUMVENTION

11. (A) The Government of the United States of America and the Government of the Republic of Fiji agree to take measures necessary to prevent circumvention of the Agreement concerning trade and textiles and apparel by transshipment, re-routing and false declaration concerning country of origin, and falsification of official documents. Accordingly, the Government of the United States and the Government of the Republic of Fiji will apply the necessary legal provisions and/or administrative procedures to comply with this Agreement concerning trade in textiles and apparel. Both parties agree that, consistent with their domestic laws and procedures, they will cooperate fully to address problems arising from circumvention.
- (B) Should either party believe that this Agreement is being circumvented by transshipment, re-routing, false declaration concerning country or place of origin, or falsification of official documents, and that no, or inadequate, measures are being applied to address or to take action against such circumvention, both parties shall consult with a view to seeking a mutually satisfactory solution. Such consultations should be held promptly, and within 30 days when possible. If a mutually satisfactory solution is not reached, the matter may be referred by either party involved to the TSB for recommendations.

- (C) Both parties agree, consistent with their domestic laws and procedures, to take necessary action to prevent, to investigate and, where appropriate, to take legal and/or administrative action against circumvention practices within their territory. Both parties agree to cooperate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of this Agreement, to establish the relevant facts in the places of import, export and, where applicable, transshipment. It is agreed that such cooperation, consistent with domestic laws and procedures, will include investigation of circumvention practices which increase restrained exports to the United States of America; exchange of documents, correspondence, reports and other relevant information to the extent available; and facilitation of plant visits and contacts, upon request and on a case-by-case basis. Both parties should endeavour to clarify the circumstances of any such instances of circumvention, including the respective roles of the exporters or importers involved.
- (D) Where, as a result of investigation, there is sufficient evidence that circumvention has occurred (e.g. where evidence is available concerning the place of true origin and the circumstances of such circumvention), both parties agree to take appropriate action, to the extent necessary to address the problem. Such action may include the denial of entry of goods or, where goods have entered, having due regard to the actual circumstances and the involvement of the country of true origin, the adjustment of charges to restraint levels to reflect the true country of origin. Also, where there is evidence that goods have been transshipped through the Republic of Fiji, such action may include the introduction of restraints. Any such actions, together with their timing and scope, may be taken after consultations held with a view to arriving at a mutually satisfactory solution and shall be notified to the TSB with full justification. Both parties may agree on other remedies in consultation. Any such agreement shall also be notified to the TSB and the TSB may make such recommendations to the parties concerned as it deems appropriate. If a mutually satisfactory solution is not reached, any party concerned may refer the matter to the TSB for prompt review and recommendation.
- (E) Parties agree that false declaration concerning fibre content, quantities, description or classification of merchandise also frustrates the objective of this Agreement. Where there is evidence that any such false declaration has been made for purposes of circumvention, both parties agree to take appropriate measures, consistent with domestic laws and procedures, against the exporters or importers involved. Should either party believe that this Agreement is being circumvented by such false declarations and that no, or inadequate, administrative measures are being applied to address and/or to take action against such circumvention, that party should consult promptly with the party involved with a view to seeking a mutually satisfactory solution. If such a solution is not reached, the matter may be referred by either party involved to the TSB for recommendation. This provision is not intended to prevent parties from making technical adjustments when inadvertent errors in declarations are made.

MUTUALLY SATISFACTORY ADMINISTRATIVE ARRANGEMENT

12. Mutually satisfactory administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of this Agreement, including differences in points of procedure or operation.

CONSULTATION ON IMPLEMENTATION QUESTIONS

13. The Government of the United States and the Government of the Republic of Fiji each agree to consult upon the request of the other on any question arising in the implementation of this Agreement.

RIGHT TO PROPOSE REVISIONS TO THE AGREEMENT

14. The Government of the United States and the Government of the Republic of Fiji may at any time propose revisions to the terms of this Agreement. Each agrees to consult promptly with the other about such proposals with a view to making such revisions to this Agreement, or taking such other appropriate action as may be mutually agreed upon.

CONSULTATIONS IN CASE OF INEQUITY VIS-A-VIS A THIRD COUNTRY

15. If the Government of the Republic of Fiji considers that as a result of limitations specified in this Agreement, it is being placed in an inequitable position in relation to a third country, the Government of the Republic of Fiji may request consultations with the Government of the United States with a view to taking appropriate remedial actions, such as a reasonable modification of this Agreement.

RIGHT TO TERMINATE THE AGREEMENT

16. Either Government may terminate this Agreement, effective at the end of an agreement period, by written notice to the other government, to be given at least 90 days prior to the end of such an agreement period.

If the foregoing proposal is acceptable to the Government of the Republic of Fiji, this note and a note of acceptance on behalf of the Government of the Republic of Fiji shall constitute an agreement between the Government of the United States and the Government of the Republic of Fiji.

The Embassy of the United States of America avails itself of this opportunity to renew to the Government of the Republic of Fiji the assurances of its highest consideration.

Embassy of the United States of America,
Suva, 27 August 1993

Embassy of the United States of America

13 September 1993

Dear Mr. Rokovada,

Enclosed please find Annexes A and B which should have been attached to our Diplomatic Note No. 83. We apologize for any inconvenience this may have caused.

Sincerely yours,

Michael W. Marine
Charge d'Affaires a.i.

Mr. Luke Rokovada
Permanent Secretary
Ministry for Commerce, Industry
and Tourism
Goodenough Street
Suva
Fiji

Enclosures

ANNEX A

Category	Description	Unit	Conversion factor
338/339/638/639	Cotton and man-made fibre knit tops	Dozen	6
338-S/339-S/ 638-S/639-S	Cotton and man-made fibre knit tops not tank tops or tees	Dozen	6

ANNEX B

Category	Period	Quantity	Annual growth rate
338/339/638/639 SUBLIMITS	1 January 1993-31 December 1993	900,000 dozen	6%
338-S/339-S/ 638-S/639-S	1 January 1993-31 December 1993	750,000 dozen	6%

Ministry of Foreign Affairs
and External Trade
Government buildings
Suva, Fiji

Note No. 104/90

The Ministry of Foreign Affairs and External Trade of the Republic of Fiji presents its compliments to the Embassy of the United States of America and has the honour to refer to the latter's Note No. 11 of 1 February 1994 regarding the conclusion of discussions in pursuit of a bilateral textiles agreement on merged category 338/339/638/639.

In view of the United States insistence that a "Protection of Rights" clause should not be included in the text of the proposed bilateral agreement, and in order to expedite the conclusion of our discussions in this regard, the Government of Fiji is prepared to withdraw its request for the inclusion of a "Protection of Rights" clause and hereby states its acceptance and agreement to the text contained in the United States Embassy; Note No. 83 of 27 August 1993.

The Ministry of Foreign Affairs and External Trade of the Republic of Fiji avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

The Embassy of the United States of America
Loftus Street
Suva

18 February 1994