
Textiles Monitoring Body

REPORT OF THE NINETY-EIGHTH MEETING

1. The Textiles Monitoring Body held its ninety-eighth meeting on 24 March 2003.
2. Present at this meeting were the following members and/or alternates: Messrs. Dalela; Gough; Lee; Seppey; Sorensen; Tagliani; Ms. Ünal; Mr. Yoshikawa; Ms. Zhang.
3. The TMB adopted the report of its ninety-seventh meeting (G/TMB/R/96).

Notification under Articles 2.8(b) and 2.11 of the Agreement on Textiles and Clothing (ATC)

4. The TMB reverted to its examination of a notification received pursuant to Article 2.8(b) and 2.11 from Bolivia¹, also on the basis of an additional notification from Bolivia in response to the TMB's request for clarification. The TMB decided to seek clarification from Bolivia regarding certain aspects of this additional notification.

Notifications under Article 6.9 of the ATC

Brazil/Chinese Taipei: imports by Brazil of certain woven fabrics from Chinese Taipei

5. The TMB resumed its review², pursuant to Article 6.9, of the notification by Brazil of a restraint measure agreed with Chinese Taipei on imports from Chinese Taipei of other woven fabrics, containing 85 per cent or more by weight of textured polyester filaments, dyed, without rubber filaments (HS/NCM Code 5407.5210)³ and of other woven fabrics, containing 85 per cent or more by weight of non-textured polyester filaments (HS/NCM Code 5407.6100). According to this notification, a limit of 16,731,305 kg. was agreed for the first quota year (i.e. 27 January 2003 to 26 January 2004). The rollback level envisaged in Article 6.8 was 16,165,512 kg. For the second quota year, the quota level would be increased by 8 per cent. The measure will remain in force until 31 December 2004. It was also noted that the request for consultations was made on 30 October 2002. The TMB observed, *inter alia*, that the specific and relevant factual information provided by Brazil in accordance with Article 6.7 contained data with respect to developments in total imports as well as several economic variables, including production, production capacity and capacity utilization, exports and prices, for three subsequent twelve-months periods, up to the period September 2000–August 2001. Furthermore, Brazil provided information for the period August 2001 to September 2002 (the period referred to in Article 6.8) on imports, as well as 2002 data for several other economic variables (share of imports in the apparent consumption, production, domestic sales, exports, import and domestic prices, as well as preliminary indications regarding profitability). The TMB recalled that pursuant to Article 6.9, in order to determine whether the agreement was justified in accordance with the provisions of Article 6, it shall have available to it the factual data provided in accordance with Article 6.7, as well as any other relevant information provided by the Members concerned.

¹ See G/TMB/R/81, paragraph 6 and G/TMB/R/86, paragraph 13.

² See G/TMB/R/96, paragraph 12.

³ NCM: Mercosul Common Tariff ("Nomenclature Comun do Mercosul")

6. The TMB observed that, although the products of HS/NCM Code 5407.5210 corresponded to a specific HS line in the Annex to the ATC, the products of HS/NCM Code 5407.6100 did not. The TMB noted that changes had taken place in the Harmonized Commodity Description and Coding System (HS) in 1996 whereby HS Code 5407.60 had become HS Code 5407.61. Therefore, the products of HS/NCM Code 5407.6100 corresponded to the products of HS Code 5407.60 in the ATC Annex, and both products subject to the agreement fell under the coverage of the ATC. Furthermore, the TMB observed that neither the products of HS/NCM Code 5407.5210 nor those of HS/NCM Code 5407.6100 had been integrated by Brazil in any of its three integration stages.

7. According to the specific and relevant factual information provided by Brazil, the Industrial Weavers' Union of Americana, Nova Odessa, Santa Bárbara d'Oeste and Sumaré (SINDITEC) had filed a request with the Brazilian Government to establish a quota (i.e. to introduce a transitional safeguard measure pursuant to the provisions of Article 6 of the ATC) on the imports of the products subject to the present agreement. SINDITEC, which represented 64 companies that produced synthetic woven fabrics, claimed that the increasing volume and low prices of imports of the products in question were causing serious damage to the domestic producers of these woven fabrics. **Imports** of the products subject to the investigation had increased by 306.1 per cent in volume terms between September 1998 - August 1999 (P1) and September 1999 - August 2000 (P2), and by 206.5 per cent in the following 12-month period (P3). In value terms, such imports had increased by 127.8 per cent between P1 and P2 and by 189.8 per cent between P2 and P3. Imports continued to increase after the latter period: at 38,944 tons, the volume of imports for the period August 2001 to July 2002 (the period mentioned in Article 6.8) was 7.26 per cent higher than that for the period September 2000 to August 2001. The average f.o.b. price of imports had decreased by 43.9 per cent between P1 and P2 and by 46.9 per cent between P1 and P3. The increase in imports had led to a number of adverse effects in the region where the industry was located, including the shutdown of more than 100 companies, unemployment, loss of revenue for the municipalities and social unrest. The factual information provided by Brazil was based on questionnaires filled by 32 companies of the 64 SINDITEC members, representing 65 per cent of the Brazilian production of the products subject to the investigation, and on a data survey conducted by an independent market research institute hired by SINDITEC. This information indicated that **production** had increased by 15.48 per cent in volume terms between P1 and P2 but had decreased by 25.17 per cent between P2 and P3. The overall decline of 13.6 per cent between P1 and P3 in volume terms (9.3 per cent in value terms) was higher than the overall 0.7 per cent drop of the volume of production for the whole textile industry during the same period. This, according to Brazil, revealed the impact of a large and concentrated production decline over the industry investigated. Furthermore, production of the investigated industry continued to show a downward trend between 2001 and 2002, with a decline of about 4 per cent in volume terms. **Production capacity** of the investigated industry expanded by 1.5 per cent from P1 to P3, while the that of the weaving industry, as a whole, expanded by over 10 per cent. This expansion was concentrated on investment in modern and more efficient equipment designed to manufacture more sophisticated products. As a result, **capacity utilization** levels reached in the period September 2000 to August 2001 (P3) were the worst ever experienced by the investigated industry, much worse than the capacity utilization rates experienced by the Brazilian textile industry or by the transformation industries in Brazil during the same period. The level of **inventories** of the 32 companies investigated increased by 18.3 per cent between 1999 and 2001, reaching a level of 2,366 tons, with an inventory-to-production ratio of 18.8 per cent in P3 reflecting the critical situation of domestic sales. **Domestic sales** increased by 15.6 per cent from P1 to P2 but declined by 29.1 per cent from P2 to P3, as a consequence of the significant increase in imported fabrics. **Exports** of the investigated fabrics were negligible, representing around 3 per cent of production and, therefore, the growth of exports in volume terms (64.7 per cent between P1 and P3) should not have been regarded as a positive sign, in particular since the export prices had been decreasing. Exports had remained at an insignificant level in 2002, dropping by about 20 per cent from the previous year. With regard to **prices**, Brazil explained that the increase in the average prices of the investigated domestic products from P1 to P3 reflected the industry's strategy to concentrate on high-end segments of the market with a view to competing with imports. The average price of the imported products at a similar stage of commercial

transaction had become inferior to that of the domestic products in P2 (by 14.94 per cent) and became 33.56 per cent lower than domestic prices in P3. According to Brazil, this difference had significantly contributed to the increase of 206.5 per cent in the volume of imports of the investigated fabrics from P2 to P3. In 2002, import prices remained relatively stable (an increase of 5.7 per cent compared with P3), while domestic prices showed a downward inflection, albeit remaining 1.73 per cent above the price of the imported products. **Employment** declined continuously over the period, by 0.8 per cent from P1 to P2 and by 8.7 per cent from P2 to P3. This latter decline was higher than that of the Brazilian textile sector, or in Brazil in general, during the same period. Over 1000 jobs were lost from P1 to P3 in the domestic production sector. **Productivity** declined by 4.5 per cent over the period under investigation. Nominal **wages** increased by 5.5 per cent in 1999, 4.5 per cent in 2000 and 8 per cent in 2001, essentially as a result of the implementation of wage agreements. However, taking into account inflation, wages remained relatively stable in real terms from 1999 to 2001. The nominal increase also reflected the recruitment of more qualified personnel required to operate the modern equipment acquired by companies, as well as the shift of production to higher value articles. The average **profitability**, calculated as a percentage over the companies' gross intakes, was 3.3 per cent in 1998, 2.4 per cent in 1999 and -0.6 per cent in 2000. From January to August 2001, profitability reached losses of 12.5 per cent. Preliminary indications showed that the industry continued to experience important losses also in 2002. **Investment** stood at US\$36 million in 1999, US\$41 million in 2000 and US\$26 million in 2001. Brazil attributed this downturn in investment to the pessimism of the domestic producers in light of low financial returns. The sector's expenditures had primarily involved the acquisition of new, more efficient and more productive equipment and had not necessarily reflected an increase in production capacity. As it stood, the Brazilian textile industrial machinery and equipment was on par with that of its competitors in other developing countries. The increase in imports had not, therefore, resulted from Brazil's lack of technological capacity. As regards **consumer preference** referred to in Article 6.2, Brazil stated that Brazilian woven fabrics were of superior quality and appealed to both domestic and foreign consumers. Foreign products had been imported increasingly because of their significantly lower prices, as they were often sold in clearance sales of discontinued or out of season merchandise. The domestic market had been sharply affected by imports. Domestic production had accounted for 97.4 per cent of apparent consumption in the first period analysed (P1), which fell to 73.8 per cent in P2 and 36.7 per cent in P3, representing a loss of **market share** of 60.7 percentage points over the period analysed. In the period September 2000 to August 2001, the share of the apparent Brazilian market held by imports was 68.8 per cent. This share remained at about the same level in the calendar year 2002.

8. According to Brazil, during the period covered by the investigation, the successive increases in imports into Brazil of the investigated synthetic fabrics had a strong impact on the domestic industry of this segment. The growing share of the domestic market held by imports eroded the base of domestic production: in volume terms, production had decreased by 13.6 per cent between P1 and P3. Imports had increased in such quantities as to cause serious damage to this sector of the domestic industry. Moreover, the data presented demonstrated the causal link between the substantial increase in imports and that damage. They also indicated that irremediable damage would be caused to the domestic industry – which had already experienced the closing down and bankruptcy of 110 companies and the loss of 1,042 jobs – unless safeguard measures were adopted.

9. In terms of attributing to certain Members the serious damage being caused to the Brazilian domestic industry, according to the specific and relevant factual information provided by Brazil, imports from Chinese Taipei of the products subject to the investigation had increased in volume terms by almost 700 per cent from September 1998 - August 1999 (P1) to September 1999 – August 2000 (P2), and by almost 600 per cent in the following 12-month period (P3). Furthermore, imports during the period mentioned in Article 6.8 (i.e. August 2001 to July 2002) followed the same pattern, further increasing. In terms of market share, imports from Chinese Taipei increased from 1.3 per cent of Brazilian apparent consumption during P1 to 19.3 per cent during P2 and 42.7 per cent during P3. The average price of imports from Chinese Taipei at a similar stage of commercial

transaction to that of the corresponding domestic products decreased from US\$10.10 per kilogram during P1 to US\$6.59 per kilogram during P2 and US\$4.18 per kilogram during P3.

10. The TMB recalled that according to Article 6.9, it had to determine whether the agreement reached between Brazil and Chinese Taipei was justified in accordance with the provisions of Article 6. In order to make its determination, the TMB first had to examine whether Brazil had successfully demonstrated pursuant to the provisions of Articles 6.2 and 6.3 that the products subject to the agreed restraint were being imported into its territory in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products. In the affirmative, the TMB would have to consider, as a next step, whether Brazil had been right, pursuant to the provisions of Article 6.4, in attributing the serious damage to a sharp and substantial increase in imports from Chinese Taipei. Should the TMB conclude that Brazil had acted in conformity with Articles 6.2, 6.3 and 6.4, it would have to examine whether the respective agreement complied with the applicable provisions of Article 6 (such as Article 6.8 regarding the level of the agreed restraint, Article 6.12 concerning the duration of the measure, Article 6.13 as regards the growth rates and flexibility provisions) and, if appropriate, whether it met other requirements specified by the ATC.

(a) Developments in total imports of Brazil

11. The TMB recalled that the volume of Brazilian imports from all sources of the two products taken together had dynamically increased during September 1999 – August 2000, compared with the corresponding previous 12-month period. This increase of 306.1 per cent had been followed by a significant further increase of 206.5 per cent during the period September 2000 – August 2001. As a result, during the three successive 12-month periods considered, the volume of total imports of the two products concerned had reached an overall increase of 1,144.8 per cent. It was also noted that the volume of total imports amounted to 38,944 tons during August 2001 – July 2002 (i.e. the period referred to in Article 6.8). Though this figure could not be directly compared to the import data provided for September 2000 – August 2001 (36,308 tons) because of the one-month overlap between the two periods, it provided a clear indication that during the most recent period, from an already significantly increased base, imports had continued to increase. While it was true that the rate of this increase appeared to slow down, the continuously upward trend could not be halted. Thus, the volume of total imports had increased more than twelvefold during a period of slightly less than four years, by any standard a significant development that warranted a close examination of the possible impact of such increased imports on the state of the Brazilian domestic industry producing like and/or directly competitive products.

(b) Examination of the serious damage claimed and its causes

12. The TMB turned, therefore, to the examination of the effect of the marked increase of total imports on the state of the domestic industry of Brazil, as reflected in changes in the relevant economic variables set out in Article 6.3. Before reviewing and analysing the reported developments in these economic variables, the TMB first addressed some issues arising from the methodology followed by Brazil in collecting data and providing factual information in support of its case.

(i) *The Brazilian domestic industry for which factual information had been provided pursuant to Article 6.7 and the methodology used for collecting such information.*

13. The TMB noted that the investigation and the resulting measure had been initiated at the request of a regional industry association, SINDITEC, which represented 64 companies that produce synthetic woven fabrics. As indicated in the factual information provided by Brazil, 32 of these 64 companies declared that "they had produced, from September 1998 to August 2001, a total of 43,973 tons of the woven fabrics classified under the two [...] tariff lines [covering the products subject to the safeguard measure]. This volume corresponds to 65 per cent of domestic production of synthetic woven fabrics, according to the Institute for Research and Industrial Marketing (IEMI), an

independent entity hired by the petitioner to carry out a data survey on the companies that produce synthetic woven fabrics for apparel".

14. In the view of the TMB, the latter part of this statement, which was included in the factual information submitted by Brazil, raised a few questions. First, the information provided appeared to be ambiguous as to whether the volume reported for the period September 1998 to August 2001 amounted to 65 per cent of the domestic production of all types of synthetic woven fabrics or to only that of the two specific products subject to the restraint agreed between Brazil and Chinese Taipei. If this share was related to the production of synthetic woven fabrics as a whole, covering a broader range of products than that of the two products in question, issues concerning the definition of the products covered by the safeguard measure or the methodology adopted by Brazil in collecting and providing specific and relevant factual information could also have arisen. However, the manner in which this information had been relied on and further developed throughout the factual information provided by Brazil, as explained in paragraph 16 below, led the TMB to assume that while the domestic industry producing the products subject to the agreed restraint corresponded to the broader industrial segment producing different types of synthetic woven fabrics, the volume of 65 per cent reported had to be related to the output of the two specific products for which serious damage had been claimed.

15. Second, questions could also be raised regarding the extent to which the situation in the domestic industry producing like and/or directly competitive products had been captured by the factual information submitted by Brazil. A careful reading of the detailed factual information led the TMB to conclude that the entire domestic industry consisted of and was limited to the 64 companies represented by SINDITEC. Thirty-two of the 64 companies "that answered the questionnaire" produced around 65 per cent of the total domestic production and the other 32 companies apparently had not provided specific information for the purpose of the investigation.

16. The TMB recalled in this context that it had already observed on previous occasions⁴ that although the ATC does not provide a definition of what constitutes the domestic industry producing like and/or directly competitive products (for the purpose of an investigation and a safeguard measure to be adopted pursuant to Article 6), the failure to provide information on a significant part of such an industry could bring about important uncertainties and could, therefore, hamper the ability of both the importing Member and the TMB to assess the situation of the domestic industry in question. The TMB noted and appreciated the fact that Brazil seemed to have shared similar concerns and that it had made efforts to remedy this situation by trying to provide information which was supposed to cover the entire domestic industry. Since half of the companies concerned had not provided any information, this was essentially achieved by extrapolating the data received from the other 32 companies, whose production volume in the period September 1998 to August 2001 was reported to correspond to 65 per cent of the total domestic production. The TMB understood that the resulting data had been checked and further assessed by the entity hired for the purpose of conducting the data survey. While recognizing that this methodology could provide a good indication of the volume of total domestic output and some related economic variables, the TMB observed also that the extrapolated data could not necessarily be fully reliable. Uncertainties could stem from the assumption underlying the methodology of extrapolation, i.e. that the share in the total production volume of the companies that had not answered the questionnaire had remained stable, representing 35 per cent, throughout the three-year period considered. This assumption of continuous unchanged share could not reflect certain developments that could or would have taken place over time and could have had some relevance in the examination of the serious damage claimed by those domestic producers that had requested the initiation of the investigation and the introduction of the safeguard measure. This observation notwithstanding, the TMB accepted that Brazil had sought to provide factual information covering the entire domestic industry producing like and/or directly competitive products.

⁴ See, in particular, G/TMB/R/49, paragraph 19 and G/TMB/R/51, paragraph 21.

(ii) *Specificity of the factual information provided by Brazil*

17. In demonstrating serious damage pursuant to Article 6.2, the factual information concerning the economic variables listed in Article 6.3 should be related, in a particular case, to what constitutes the domestic industry producing like and/or directly competitive products, and, to the extent possible, be specific to that particular industry in respect of which the serious damage is being claimed. The TMB recalled that, on a previous occasion, it had already emphasized that "in case of recourse to Article 6, it was important to provide as much factual information and data as possible that was specific to the product [...] itself [i.e. to the product(s) subject to the transitional safeguard measure], as product-specific information and data should have a major impact on the overall assessment whether serious damage or actual threat thereof could be demonstrated".⁵ It was also understood that there could be a situation where it had not been possible for the importing Member to provide product-specific information and data with respect to each and every economic variable envisaged in Article 6.3. The TMB had also expressed the view that in such a case and in respect of such variables, factual information and data that related as closely as possible to the product(s) in question should be examined and submitted.⁶

18. Bearing in mind the above, the TMB also noted that Brazil had provided factual information on each of the economic variables listed in Article 6.3. In addition, the information had covered domestic sales, which is not explicitly mentioned in the same Article. Furthermore, the factual information provided by Brazil was specific to the products subject to the safeguard measures in relation to output, inventories, market share, exports, capacity utilization, domestic prices and productivity, whereas, data regarding employment, wages, profits and investments were related to a somewhat broader segment of the industry. Taking all the above into consideration, the TMB noted that Brazil had essentially complied with the requirements of providing specific and relevant factual information for the period covered by its investigation in order to substantiate its case.

(iii) *Examination of changes in the relevant economic variables, as reported by Brazil*

19. It was noted that the volume of **domestic output** had increased by 15.5 per cent during the second period (P2) compared with the first period (P1). During the same period, however, apparent consumption showed an increase of 52 per cent and, as a result, the greater part of this latter increase had been covered by the significant increase in total imports. The serious difficulties had begun during the third period (P3), when domestic production had decreased by 25.2 per cent (or by 13.6 per cent if compared with P1), while apparent consumption had increased by a further 50.5 per cent and imports had registered an increase of 206.5 per cent. It was also recalled that, according to the supplementary information received from Brazil, in 2002 domestic output had shown a further decline of around 4 per cent in comparison with the performance of 2001. The TMB noted that the significant decline of domestic output that had begun during the third period pointed to an industry facing serious difficulties since both imports and apparent consumption had shown a further dynamic growth during the same period.

20. It was observed that the **utilization of production capacity** had reached very low levels throughout the period investigated (26.4 per cent, 29.8 per cent and 25.1 per cent, respectively, during P1, P2 and P3). However, Brazil had also recognized in the factual information provided that these rates would indicate higher levels if other parcels of artificial and synthetic woven fabric production not covered by the investigation were included. The TMB noted that the rate of utilization had decreased during P3, but was of the view that this trend could not be directly attributed to the effects of increased imports since the same machinery, equipment and labour force could be used for the production of other goods by the industry producing artificial and synthetic woven fabrics. In any event, it was considered that the information related to the utilization of capacity would not provide

⁵ See G/TMB/R/26, paragraph 25.

⁶ See G/TMB/R/26, paragraph 26.

important guidance in assessing the overall state of the domestic industry as affected by the claimed pressure of significantly increased imports.

21. In the view of the TMB, no meaningful conclusion could be drawn from the information related to **inventories** either, especially since this information was only partial, due to the fact that it was limited to the data on inventories provided by the 32 companies requesting the initiation of the investigation. Though the inventory-to-production ratio of these companies indicated a clear deterioration, in particular in P3, this could constitute, at most, a slightly negative factor in the overall picture revealed by the domestic industry.

22. The TMB recalled that information regarding **domestic sales**, an economic variable not listed in Article 6.3, demonstrated an increase of 15.6 per cent in P2, followed by a significant drop in P3 (29.1 per cent compared with P2 and 18.0 per cent compared with P1). It was observed that the respective data had been derived from the information available regarding output, exports and inventories. While recognizing the unfavourable developments that had started during P3, it had to be kept in mind that data related to inventories were only partial (see paragraph 21 above) and this could inject an element of distortion or uncertainty into the constructed figures provided by Brazil regarding domestic sales.

23. The TMB noted that **exports** of the two products represented a very small fragment of the domestic output (1.45 per cent during P1, 1.96 per cent during P2 and 2.77 per cent during P3). Furthermore, exports had continued to remain at an insignificant level in 2002; their total volume had actually decreased by around 20 per cent compared with 2001. The TMB agreed that developments in exports, given their very limited magnitude, were essentially irrelevant to the examination of the determination of serious damage.

24. It was observed that the average **prices** of the domestic products had increased by 19.6 per cent during P2 and by a further 21.3 per cent during P3, while average import prices had revealed an opposite movement (a significant drop of 43.9 per cent during P2 and a further decrease of 5.2 per cent during P3). In the supplementary information, Brazil reported that in 2002 import prices had remained relatively stable, while domestic prices had shown an important downward inflexion, although remaining above the average level of import prices. The TMB noted that the changes in the ratio between average imports prices and domestic prices appeared to be particularly relevant for the purpose of assessing the possible impact of increased imports on the state of the Brazilian domestic industry. While this ratio achieved 171.43 per cent in P1, it dropped practically by half to 85.1 per cent in P2 and decreased further to 66.4 per cent in P3. In reflecting on these changes and the respective opposite movements of domestic and imports prices, it was observed that the Brazilian industry had not reacted immediately to the pressure arising from the significant drop of the average import prices as could be expected, since the average domestic prices had continued to increase even in these circumstances. The likely explanation was that, as indicated also by Brazil in the factual information, the domestic industry had sought to move to higher-end segments of the market, thereby allowing imports to take over the lower-end segments. This strategy had apparently failed, since the Brazilian industry had proved unable to compete with the flux of imports (and their respective price level) and had lost further ground. The TMB observed that, independent of the industry's strategy, the significant price gap that had prevailed, in particular during P3, had created insurmountable difficulties to the domestic producers, which had been reflected in the decline of their production and in the significant drop in their share of the market.

25. Turning to the developments related to **employment**, it was observed that the information provided by Brazil was related to a broader segment of the domestic industry and did not contain data regarding absolute figures for total employment. Although it was not possible to make a well-informed judgment on the changes reported in this area, it appeared to the TMB that the job losses had been quite significant (around 10 per cent of the total workforce) during P3. In view of the geographical concentration of the domestic industry (within certain municipalities in the State of São

Paolo), the marked decline in employment could create serious difficulties in the areas and populations concerned. However, it was not possible to assess the extent to which these job losses could be linked directly to the effects of the competition caused by increased quantities of imports of the two products in question.

26. The TMB observed that the reported decrease of 4.5 per cent in **productivity** (calculated as the annual volume produced per employee) pointed to problems encountered by the domestic industry, but this could not be considered as a crucial indicator in assessing the overall situation, because the same workforce could also be moved to other production lines of the artificial and synthetic woven fabric industry.

27. Turning to the evolution of **wages**, the TMB noted that nominal wages had steadily increased during the three periods examined. Since the domestic industry had experienced serious problems allegedly linked to increasing low-priced imports, wages should normally have shown a decreasing trend. It could thus be argued that wage increases had caused a kind of self-inflicted weakness to the industry. The TMB understood, however, that the Brazilian companies had to comply with relatively rigid labour statutes (which had been conceived to offset high inflation rates that had occurred in the past). Furthermore, wages had remained virtually at the same level in real terms during the three twelve-month periods considered (in fact, the combined rate of inflation had slightly exceeded the rate of increase in nominal wages). In this context, the evolution in wages could not provide sufficient guidance in the overall assessment of the state of the domestic industry.

28. Data regarding average **profitability** of the investigated companies revealed a continuous deteriorating trend, indicating important losses starting in P3 and apparently continuing beyond that period. The TMB observed, on the one hand, that these data had been related to a broader segment of the domestic industry and, therefore, the problems experienced could not be explained solely by the pressure caused by the increased volume and the respective low price level of total imports. The TMB accepted, on the other hand, that the longer-term viability of the Brazilian domestic industry could not be sustained in circumstances when the industry in question was experiencing important losses. It had to be assumed that the negative profitability could be, at least partially, the result of the competition of low-priced imports of the two products in question.

29. It was observed that, according to the factual information provided by Brazil, the sector had continued to make **investments** during the three periods examined, but the amount invested during P3 had decreased by around one third compared with the previous period. The TMB noted that, in the view of Brazil, this downturn in investments had been caused by the pessimism of domestic producers in light of the low financial returns. It was also noted that investments had primarily been designed to acquire more efficient and more productive equipment. The data and information at the TMB's disposal in this regard pointed to a domestic industry which was struggling to survive and trying to adjust. It was also observed, however, that the new and more efficient machinery and equipment acquired could be used in other production lines as well.

30. As regards the data provided concerning the **market share** held by the domestic producers, the TMB recognized that the loss of around 60 percentage points over the period examined, with the apparent consolidation of this loss during the most recent period, indicated an industry that had been facing serious difficulties and that its longer term viability could also be called into question unless remedial steps were taken rapidly.

(iv) Overall assessment

31. Recalling that pursuant to Article 6.2, "[...] serious damage [...] must demonstrably be caused by such increased quantities in total imports of that product and not by such other factors as technological changes or changes in consumer preference", the TMB noted the view expressed by Brazil that Brazilian textile industrial equipment was currently on par with competitors in other

developing countries. The factual information, which stated that nearly all investments in plant modernization had been targeted toward acquiring equipment that contained technological innovation more suitable for working with synthetic weave, seemed to support the validity of this view.

32. Furthermore, the TMB had no reason and no grounds to question Brazil's statement to the effect that woven fabrics produced by its domestic industry "contain superior quality which pleases both domestic and foreign consumers".

33. In light of paragraphs 31 and 32 above, the TMB accepted Brazil's view that the difficulties experienced by the Brazilian domestic industry could not result from technological changes or changes in consumer preference.

34. The TMB recalled that, according to Article 6.3, "[i]n making a determination of serious damage [...] the Member shall examine the effect of [such increased quantities of] imports on the state of the particular industry, as reflected in changes in [...] relevant economic variables [listed in Article 6.3]; none of which, either alone or combined with other factors, can necessarily give decisive guidance". After having considered the changes reported by Brazil in each of the relevant economic variables, the TMB concluded that the significant increase of the volume of total imports of the two products, coupled with their low price level, had caused serious damage to the Brazilian domestic industry, as reflected, in particular, in the significant drop in output and domestic sales (both starting during the third period examined), the significant loss of market share and the decline and subsequent negative profitability of the companies concerned. This conclusion was also supported, to a certain extent, by the decrease in the employment level and by the trends observed regarding the investments made. The TMB observed, furthermore, that the evolution of exports was largely irrelevant given the insignificant quantities involved, while information regarding other economic variables such as capacity utilization, inventories, productivity and wages did not provide meaningful guidance in assessing the overall state of the domestic industry as affected by the significant increase in total imports.

35. Accordingly, the TMB found that Brazil had successfully demonstrated, pursuant to the provisions of Articles 6.2 and 6.3, that the two products subject to the agreed restraint were being imported into its territory in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products.

(c) Attribution of the serious damage to imports from Chinese Taipei

36. The TMB recalled that according to Article 6.4 "[...] [t]he Member or Members to whom serious damage, or actual threat thereof, referred to in paragraphs 2 and 3 [of Article 6], is attributed, shall be determined on the basis of a sharp and substantial increase in imports, actual or imminent, from such a Member or Members individually, and on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable stage of commercial transaction; none of these factors, either alone or combined with other factors, can necessarily give decisive guidance. [...]".

37. It was noted that imports from Chinese Taipei of the two products subject to the agreed restraint had increased by 695 per cent in P2 and by a further 576 per cent in P3 compared with the respective previous 12-month periods. Though not directly comparable, such imports also continued to increase during August 2001 to July 2002, the reference period established pursuant to Article 6.8. Therefore, imports from Chinese Taipei showed a sharp and substantial increase during the period analysed. The share of Chinese Taipei in total imports of Brazil amounted to 9.9 per cent in P1, 19.3 per cent in P2, 42.3 per cent in P3 and 41.5 per cent during the reference period, making Chinese Taipei the major foreign supplier to the Brazilian market. The share of the two products imported from Chinese Taipei in the total apparent consumption of Brazil represented 1.25 per cent during P1, 6.53 per cent during P2 and 29.34 per cent during P3. Since apparent consumption had

more than doubled from P1 to P3, the almost 30 per cent share achieved in P3 corresponded to a significant portion of the Brazilian market. The ratio of the average price level of products imported from Chinese Taipei to the average price level of domestic production, examined at a comparable stage of commercial transaction, amounted to 187.4 per cent during P1, 108.2 per cent during P2 and 56.6 per cent during P3, a clear indication that in P3 the domestic producers had been unable to compete with the significantly lower-priced imports originating from Chinese Taipei.

38. Having considered all the relevant facts, the TMB agreed with Brazil that the serious damage caused to its domestic industry could be attributed, *inter alia*, to imports from Chinese Taipei.

(d) Review of the main elements of the agreement reached

39. The TMB noted that the agreed restraint had been applied as from 27 January 2003 and would remain in force until 31 December 2004. Furthermore, the level of the restraint established for the first year exceeded by 3.5 per cent the rollback level as specified in Article 6.8. For the second year of application, the restraint level would be increased by 8 per cent. The agreement reached between Brazil and Chinese Taipei provided also for the possibility of carryover of 10 per cent and carry forward of 10 per cent. Thus, the agreed restraint would be implemented fully in accordance with the requirements specified in Article 6.13.

40. An Annex to the agreement laid down the related administrative procedures to be applied for the implementation and control of the restraint. The TMB noted that the procedures contained in the Annex largely corresponded to the provisions of administrative arrangements referred to in Article 2.17. Also in line with the provisions of Article 4.1, the restraint would be administered by the exporting Member through the issuance of export licenses. The Brazilian authorities would issue the import authorization upon presentation by the importers of the corresponding export authorizations. The administrative procedures agreed specified the format and model of the export authorizations to be used and also provided for the transitional arrangements to be applied to shipments for which import authorizations had already been issued before the entry into force of the agreed measure. The TMB took note of the administrative procedures contained in the Annex to the agreement.

(e) Overall conclusion

41. Bearing in mind, in particular, the conclusions reflected in paragraphs 35, 38, 39 and 40 above, the TMB determined that the agreement reached between Brazil and Chinese Taipei was justified in accordance with the provisions of Article 6.

Brazil/Korea: imports by Brazil of certain woven fabrics from Korea

42. The TMB resumed its review⁷, pursuant to Article 6.9, of the notification by Brazil of a restraint measure agreed with Korea on imports from Korea of other woven fabrics, containing 85 per cent or more by weight of textured polyester filaments, dyed, without rubber filaments (HS/NCM Code 5407.5210)⁸ and of other woven fabrics, containing 85 per cent or more by weight of non-textured polyester filaments (HS/NCM Code 5407.6100). According to this notification, a limit of 15,606,527 kg. was agreed for the first quota year (i.e. 27 January 2003 to 26 January 2004). The rollback level envisaged in Article 6.8 was 15,078,770 kg. For the second quota year, the quota level would be increased by 8 per cent. The measure was set to remain in force until 31 December 2004. It was also noted that the request for consultations had been made on 30 October 2002. The TMB observed, *inter alia*, that the specific and relevant factual information provided by Brazil in accordance with Article 6.7 contained data with respect to developments in total imports as well as

⁷ See G/TMB/R/96, paragraph 13.

⁸ NCM: Mercosul Common Tariff ("Nomenclature Comum do Mercosul")

several economic variables, including production, production capacity and capacity utilization, exports and prices, for three subsequent twelve-months periods, up to the period September 2000 – August 2001. Furthermore Brazil provided information for the period August 2001 to September 2002 (the period referred to in Article 6.8) on imports, as well as 2002 data for several other economic variables (share of imports in the apparent consumption, production, domestic sales, exports, import and domestic prices, as well as preliminary indications regarding profitability). The TMB recalled that pursuant to Article 6.9, in order to determine whether the agreement was justified in accordance with the provisions of Article 6, it shall have available to it the factual data provided in accordance with Article 6.7, as well as any other relevant information provided by the Members concerned.

43. Brazil provided the same specific and relevant factual information to Korea as it had provided in the case of the restraint measure agreed with Chinese Taipei (see paragraphs 7 and 8 above). As regards the attribution to certain Members of the serious damage being caused to the Brazilian domestic industry, according to that information, imports from Korea of the products subject to the investigation had increased in volume terms by about 547 per cent from September 1998 – August 1999 (P1) to September 1999 - August 2000 (P2), and by almost 155 per cent in the following 12-month period (P3). Furthermore, imports during the period referred to in Article 6.8 (i.e. August 2001 to July 2002) followed the same pattern, further increasing. In terms of market share, imports from Korea increased from 3.4 per cent of Brazilian apparent consumption during P1 to 14.6 per cent during P2 and 35.9 per cent during P3. The average price of imports from Korea at a similar stage of commercial transaction to that of the corresponding domestic products decreased from US\$9.47 per kilogram during P1 to US\$5.40 per kilogram during P2 and increased slightly to US\$5.69 per kilogram during P3.

(a) Developments in total imports of Brazil and examination of the serious damage claimed and its causes

44. The TMB observed that the request for consultations pursuant to Article 6.7 had been addressed by Brazil to Korea on the same date as a similar request addressed to Chinese Taipei,⁹ and that it covered the same two products (i.e. other woven fabrics, containing 85 per cent or more by weight of textured polyester filaments, dyed, without rubber filaments (HS/NCM Code 5407.5210) and other woven fabrics, containing 85 per cent or more by weight of non-textured polyester filaments (HS/NCM Code 5407.6100). Moreover, the TMB observed that the specific and relevant factual information provided to Korea together with the request for consultations pursuant to Article 6.7, concerning developments in total imports and the factors referred to in Article 6.3, on which Brazil had based the determination of the existence of serious damage, was the same as that provided to Chinese Taipei, referred to above.¹⁰ Therefore, the TMB considered that its examination of the information provided, as detailed in paragraphs 11 to 34 above, and its finding that Brazil had successfully demonstrated, pursuant to the provisions of Articles 6.2 and 6.3, that the two products subject to the agreed restraint were being imported into its territory in such increased quantities as to cause serious damage to its domestic industry producing like and/or directly competitive products¹¹ applied also to the case of the restraint agreed between Brazil and Korea.

(b) Attribution of the serious damage to imports from Korea

45. The TMB recalled that, according to Article 6.4, "[...] [t]he Member or Members to whom serious damage, or actual threat thereof, referred to in paragraphs 2 and 3[of Article 6], is attributed, shall be determined on the basis of a sharp and substantial increase in imports, actual or imminent, from such a Member or Members individually, and on the basis of the level of imports as compared

⁹ See G/TMB/R/96, paragraphs 13 and 12, respectively.

¹⁰ See paragraph 7 above.

¹¹ See paragraph 35 above.

with imports from other sources, market share, and import and domestic prices at a comparable stage of commercial transaction; none of these factors, either alone or combined with other factors, can necessarily give decisive guidance. [...]".

46. It was noted that imports from Korea of the two products subject to the agreed restraint had increased by 547 per cent in P2 and by a further 155 per cent in P3 compared with the respective previous 12-month periods. Though not directly comparable, such imports also continued to increase during August 2001 to July 2002, the reference period established pursuant to Article 6.8. Therefore, imports from Korea showed a sharp and substantial increase during the period analysed. The share of Korea in total imports of Brazil amounted to 27.2 per cent during P1, 43.3 per cent during P2, 35.9 per cent during P3 and 38.7 per cent during the reference period. Thus, Korea had become the second main foreign supplier to the Brazilian market with more than one third of overall imports. The share of the two products imported from Korea in the total apparent consumption of Brazil represented 3.44 per cent in P1, 14.63 per cent in P2 and 24.73 per cent in P3, a significant portion of the Brazilian market. The ratio of the average price level of products imported from Korea to the average price level of domestic production, examined at a comparable stage of commercial transaction, amounted to 175.7 per cent during P1, 88.7 per cent during P2 and 77.0 per cent during P3, which was a clear indication that, during P2 and in particular P3, the domestic producers had been unable to compete with the significantly lower-priced imports originating from Korea.

47. Having considered all the relevant facts, the TMB agreed with Brazil that the serious damage caused to its domestic industry could be attributed, *inter alia*, to imports from Korea.

(c) Review of the main elements of the agreement reached

48. The TMB noted that the agreed restraint had been applied as from 27 January 2003 and would remain in force until 31 December 2004. Furthermore, the level of the restraint established for the first year exceeded by 3.5 per cent the rollback level as specified in Article 6.8. For the second year of application, the restraint level would be increased by 8 per cent. The agreement reached between Brazil and Korea provided also for the possibility of carryover of 10 per cent and carry forward of 10 per cent. Thus, the agreed restraint would be implemented fully in accordance with the requirements specified in Article 6.13.

49. An Annex to the agreement laid down the related administrative procedures to be applied for the implementation and control of the restraint. The TMB noted that the procedures contained in the Annex largely corresponded to the provisions of administrative arrangements referred to in Article 2.17. Also in line with the provisions of Article 4.1, the restraint would be administered by the exporting Member through the issuance of export licenses. The Brazilian authorities would issue the import authorization upon presentation by the importers of the corresponding export authorizations. The administrative procedures agreed specified the format and model of the export authorizations to be used and also provided for the transitional arrangements to be applied to shipments for which import authorizations had already been issued before the entry into force of the agreed measure. The TMB took note of the administrative procedures contained in the Annex to the agreement.

50. Bearing in mind, in particular, the conclusions reflected in paragraphs 44, 47, 48 and 49 above, the TMB determined that the agreement reached between Brazil and Korea was justified in accordance with the provisions of Article 6.

Notification under Article 3.2(b)

51. The TMB observed that the notification made by Brazil under Article 6.9 of a restraint measure agreed with Chinese Taipei, examined above¹², contained, in addition, a bilateral agreement between the two Members with reference to the phase-out programme of the quantitative restriction maintained by Brazil on imports from Chinese Taipei of certain man-made knitted or crocheted fabrics, notified by Brazil pursuant to Article 3.2(b).¹³ This phase-out programme had been examined by the TMB at its meeting in July 2002.¹⁴ According to this agreement, the restraint level for the last quota year (i.e. 15 September 2002 to 14 September 2003) was increased by 43.75 per cent and the termination of the restriction was brought forward to 30 June 2003. The TMB took note of this notification.

¹² See paragraphs 5 to 41 above.

¹³ See G/TMB/N/453.

¹⁴ See G/TMB/R/90, paragraph 56.