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ANTI-DUMPING ACTIONS IN THE AREA OF TEXTILES AND CLOTHING

**Proposal for a Specific Short-Term Dispensation in Favour of Developing Members
Following Full Integration of the Sector into GATT 1994 from January 2005**

*Communication from Costa Rica; Guatemala; Hong Kong China; India; Indonesia;
Macao, China; Maldives; Pakistan; People's Republic of China;
Thailand and Vietnam*

The following communication, dated 11 July 2003, has been received from the above-mentioned delegations.

Introduction

1. In January 2003, 18 developing Members that are also members of the International Textiles and Clothing Bureau (ITCB) submitted a paper to the Negotiating Group on Rules on "Anti-dumping Actions in the Area of Textiles and Clothing: Developing Members' Experiences and Concerns" (TN/RL/W/48/ Rev.1).
2. The paper brought out their experience as regards the anti-dumping activity affecting their exports of textiles and clothing – a very large industrial sector for them – and the disruptive effects of these actions. The paper concluded that a particularly important aspect of the anti-dumping regime responsible for such disruptive effects was the very initiation of investigations into allegations of dumping, often prompted by protection-seeking interests.
3. The main conclusions of the paper, based on a detailed factual analysis of anti-dumping actions by two major developed Members, were generally acknowledged when the Negotiating Group on Rules considered the submission in its meeting on 6 – 7 February 2003.

Experience with anti-dumping actions on textiles and clothing

4. It may be recalled that due to the long legacy of quota restrictions, trade in textiles and clothing remains ever vulnerable to disproportionate protectionist pressures. Thus, besides quota restrictions, the sector has also seen a large number of anti-dumping actions especially affecting exports from developing countries and economies.
5. A survey of these actions during the last several years revealed that, during 1994 – 2001, the sector was targeted by one major restraining Member for as many as 53 new initiations of investigations into allegations of dumping placing it the 3rd among all sectors. The only other sectors witnessing higher numbers of initiations by this Member were iron and steel, and chemicals. Significantly, of these 53 initiations, 46 or 87% involved imports from developing countries.

6. The other salient features deriving from in-depth review of 29 of the 46 cases noted above may be summarized as follows:

- (a) Most often, the investigations were prompted by motivated complaints lodged by industry associations.
- (b) That a series of complaints were lodged at the same time targeting the lion's shares (60%) of total imports in the products concerned carried an apparent protectionist purpose.
- (c) Reinforcing the protectionist motivation was also the fact that, in several instances, investigations into the same products were revived back-to-back, extending over long periods. In the case of one product (cotton fabrics), these were continued for five years. In the case of another (bed linen), these have been going on in one form or the other since January 1994.
- (d) The investigations resulted in significant disruptions for the exporting countries concerned, causing large declines in their import shares: In one product from 59% before the initiation of investigations to 38% when the investigations were finally dropped; in another from 52% to 45%.
- (e) In virtually all cases, the investigations or measures adopted proved to be unjustified because these were either dropped by the investigating authorities themselves or the very methodology used by the importing Member in its dumping determinations was found by a dispute Panel and the Appellate Body to be inconsistent with its WTO obligations.
- (f) As another glaring reality, the cases revealed that the exporting firms from developing Members were generally small or medium-sized. They accounted for small export volumes, raising a question as to whether such small enterprises could at all be capable of dumping. It is difficult to conceive that these small enterprises could muster the economy of scale to engage in price discrimination.

7. Although the anti-dumping activity involving textile and clothing products in the other major importing Member had been less pronounced, the measures adopted by it have remained in place for long periods (11 to 19 years) even when, in the meantime, there had been no imports in the product from the exporting Member concerned.

8. For factual details and analysis of anti-dumping investigations and actions cited in paragraphs 5 – 7 above, reference is invited to the paper in TN/RL/W/48/ Rev.1.

9. It needs to be re-emphasized that these anti-dumping actions were pursued despite the products being under severe quota restrictions.

Implications from the legacy of quota restrictions

10. With respect to quota restrictions on textiles and clothing, it may be recalled that international trade in the sector has been virtually excluded from the normal rules and disciplines of the GATT/WTO for some four decades. To correct this anomaly, the Agreement on Textiles and Clothing (ATC) was negotiated in the Uruguay Round. Its purpose was to bring about the reintegration of the sector into the same mainstream of multilateral rules as for any other industrial sector, *by a progressive phase-out* spread over a transitional period of ten years commencing from the coming into effect of the WTO.

11. Unfortunately, in implementing the ATC, the developed restraining Members have left the bulk of quota restrictions to be eliminated only at the end of the transitional period. Thus, even after 8 ½ years of implementation, the following numbers of quotas still remain in place: 851 out of 932 in the United States, 222 out of 303 in the EU, and 292 out of 368 in Canada.

12. Consequently, firstly, when the remaining quotas are finally abolished at the end of 2004, it is bound to exert downward pressure on prices. A sudden fall in prices is feared in turn to encourage the domestic industry to cry dumping and spark political pressures for greater recourse to alternate forms of protection, especially anti-dumping, exacerbating the problem created by the postponement of any effective liberalization of the sector to the very end of transitional period. In this context, it may be noted that the industry interests are prone to equating any declines in prices with dumping.

13. Secondly, under the quota regime, trade transactions have not always been driven by normal commercial considerations alone. Quota considerations have been an important component of pricing decisions and arrangements. After the abolition of all quotas, it will be some time before trade in the sector finds its normal course.

14. Thirdly, in view of the distortion of pricing decisions under the quota regime, allegations about dumping in the immediate aftermath of the abolition of quotas could not be reasonably evaluated unless there was sufficient opportunity for trade to find its normal course.

The need for action

15. It is widely acknowledged that the very initiation of investigations into alleged dumping cause considerable adverse effects on exporters and businesses concerned. As witnessed from experience with the spate of investigations in the field of textiles and clothing referred to in this paper, these investigations are often prompted by interested parties to preserve their corner of the market.

16. In the event, it is in the interest of both exporting and importing Members as well as the efficiency of the multilateral trading system that an appropriate period of time is provided for business operators to compete in the market in a meaningful way and to allow trading conditions to adjust to the normal business environment. It is also important that developing countries are protected against un-warranted recourse to trade remedy actions, so that market access so painstakingly secured is not undermined.

17. In this context, it is worth recalling that in recognition of the problem brought about in this paper, the Ministers in Doha decided that “Members will exercise particular consideration before initiating investigations in the context of anti-dumping remedies on textile and clothing exports from developing countries previously subject to quantitative restrictions under the Agreement [on Textiles and Clothing] for a period of two years following full integration of this Agreement into the WTO”.¹ They also “pledged to reject the use of protectionism”.²

18. The precise parameters for giving effect to the above decision are however yet to be established. Nor have the restraining Members spelled out the manner in which they propose giving effect to it.

19. It may be noted in this respect that Ministers have repeatedly emphasized the need for developing countries to benefit from increased opportunities that the multilateral trading systems generates. Besides pledging to reject the use of protectionism, they also affirmed their will to continue to make positive efforts designed to ensure that developing countries secure a share in the

¹ Ministerial Decision on Implementation-Related Issues and Concerns, (WT/MIN(01)/17), paragraph 4.2.

² Ministerial Declaration, (WT/MIN(01)/DEC/1), paragraph 1.

growth of trade commensurate with the needs of their economic development and that, in this context, enhanced market access and balanced rules have important roles to play³.

The proposal

20. In light of:

- the considerations brought out in this paper;
- the lack of progressivity in phasing out quota restrictions by the restraining Members;
- various Ministerial decisions and declarations referred to in this paper; and
- the need to take into account the interests of developing Members especially with regard to providing them with the security of market access and protection against wrongful recourse to trade remedy actions;

it is proposed that the General Council recommend to the Ministerial Conference to decide that:

“With a view to allowing trade in textiles and clothing to adjust to normal trading conditions free of the influence of the long-standing quota regime following the full integration of the sector into the WTO in accordance with the Agreement on Textiles and Clothing, developed Members shall implement a grace period of two years during which no investigations in the context of anti-dumping remedies on imports of textile and clothing products from developing countries shall be initiated”.

³ Ministerial Declaration, (WT/MIN(01)/DEC/1), paragraph 2.