

CANADIAN COMPETITION RECORD

REGULATORY AND TRADE DEVELOPMENTS

U.S. RESPONSE TO THE FIRST WTO TEXTILE MONITORING BODY DISPUTE RESOLUTION DECISIONS

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Over the past twenty years, trade in textiles was governed by an arrangement consisting of bilaterally negotiated quotas under the Multifiber Arrangement (the "MFA"). However, one of the principal negotiating objectives during the Uruguay Round multilateral trade negotiations was to phase out the MFA in order to integrate the textile sector into the WTO on the basis of stronger rules and disciplines. As a result of the Uruguay Round Agreement, trade in textiles is now governed under the Agreement in Textiles and Clothing (the "ATC").

The ATC integrates the textile trade sector into the WTO over ten years by eliminating quotas and restricting the ability of countries to impose new quotas during the transition period. In particular, the WTO is viewed as increasing the "leverage" of some developing countries which were reluctant in the past to oppose quotas established by the industrialized countries.

Under the ATC, importing countries are allowed to use a transitional safeguard mechanism during the phase out period to protect against any import surges

of products not yet fully integrated into the WTO. Quotas are permitted on uncontrolled products of exporting countries that are found to be entering in such increased quantities as to cause or threaten damage to the domestic industry. These safeguards are set by either mutual agreement of the parties involved or by unilateral action. In addition, the ATC establishes the Textile Monitoring Body (the "TMB") which supervises the implementation of the ATC.

In late March 1995, the U.S. used the ATC when the U.S. Committee for the Implementation of Textile Agreements (the "CITA") determined that imports of underwear and nightwear from eight countries (Honduras, Costa Rica, Dominican Republic, Thailand, Turkey, El Salvador, Jamaica and Colombia) were entering the U.S. in such increased quantities as to cause or threaten damage to the U.S. textile industry. The CITA is responsible for supervising the implementation of U.S. trade agreements in textiles and apparel. The Committee makes determinations under the ATC's transitional safeguard provision and takes actions in cases in which it finds injury or threat. As a result of the determination, CITA issued "calls" against these eight countries to impose restraints on millions of dollars of textile imports.

U.S. companies who buy their fabric or make clothing abroad generally oppose the quotas, while

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vertically integrated U.S. firms that primarily use U.S. fabric support the CITA's restraints.

A process of negotiations was then triggered by this determination where the U.S. and the countries involved attempted to agree on specific limits. The parties had sixty days from the date of the calls to reach mutually accepted agreements. During the consultation period, only Jamaica and the Dominican Republic settled and agreed to limits. However, since no agreement on a mutually satisfactory solution was reached between the U.S. and the remaining six countries, the CITA unilaterally imposed new limits on underwear and nightwear from these countries.

Shortly thereafter, the U.S. reached agreements with El Salvador, Colombia and Turkey. The U.S. also withdrew its quota threat against Thailand. However, Costa Rica and Honduras refused to bow to U.S. pressure and had not yet finalized any deals with the U.S.

ATC rules require that any importing country that imposes new quotas has to justify that action before the TMB by demonstrating that an increase in imports was causing serious damage or threat to domestic producers of the same product. The TMB is a ten member body made equally of representatives from textile importing and exporting countries. The TMB automatically reviews all unilateral limits as well as mutually agreed upon agreements and operates on consensus.

In reviewing imposed limits, the TMB has the power to recommend that the action be overturned if it is not consistent with Uruguay Round rules. Therefore, in early July the U.S. began its defense before the TMB of its decision to impose textile quotas. The

TMB decision was critical since it would decide whether the U.S. could go forward and impose new restraints on underwear imports. Also, it was the first test of how much freedom the U.S. and other large importers would have to issue "calls" and establish new quotas now that the Uruguay Round is in effect.

The newly formed body reached its first decision on July 21, 1995. The TMB recommended that the U.S. drop a unilateral safeguard it had imposed on nightwear from Honduras because it found that a case of serious damage or threat thereof had not been demonstrated.

However, while the TMB ruled unanimously that underwear imports from Honduras and Costa Rica had not seriously damaged U.S. companies that made the same products, it failed to reach a consensus decision on the existence of threat to U.S. producers of underwear imports from Honduras and Costa Rica. The TMB split 5 - 4 with exporting countries (India, Pakistan, Brazil, Korea, and Indonesia) voting "no threat" and importing countries (the European Community, Canada, Japan, and Norway) voting "for threat". As a result of this lack of consensus, the TMB did not recommend that the U.S. remove quotas but instead called for the U.S. to hold "further consultations... with a view to arriving at a mutual understanding..." The TMB decision states that consultations must be finished and the results reported back to the TMB within 30 days of the decision.

The TMB still needs to review the U.S. agreements setting quota limits on underwear imports from Colombia, the Dominican Republic, El Salvador and Turkey. However, the U.S. opposes this monitoring procedure. Administration officials do not believe

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that these mutually satisfactory agreements should be subject to TMB review since they are acceptable to both parties and thus no longer a dispute. The U.S. has also indicated that it would not rescind calls issued against Honduras of imports of nightwear despite the recommendations of the TMB.

Article 6.9 of the ATC, however, states that all bilateral agreements are to be reviewed by the TMB. Countries must notify any new quota restraint arrangements to the TMB in order that the TMB can determine whether the agreements are justified under the safeguard provisions of the ATC.

Meanwhile, the TMB has also made a determination regarding three textile quotas disputed between the U.S. and India on woollen garments. In July 1995, the CITA had placed restrictions on woollen garments from India after consultations failed. The TMB ruled in mid-September that the U.S. was not justified in imposing quotas on certain wool coats since it did not find the imports to cause serious damage or threat thereof, and should therefore rescind the quotas. A second quota was allowed to remain after the TMB found that actual threat of serious damage had been demonstrated. However, on the third quota, the TMB once again could not reach a consensus on the existence of threat of serious damage. Therefore, the U.S. and India will continue to try to achieve a bilateral resolution to the dispute.

Also, in early September, the U.S. and Honduras finally settled their dispute when they reached an agreement on the number of underwear imports from Honduras which could enter the U.S. However, a similar agreement has not been reached between the U.S. and Costa Rica. The two countries reported back to the TMB that they had not reached a "mutual understanding" on underwear imports.

Under the ATC, if matters still remain unresolved after further consultations, either party involved in the dispute may bring the issue before the Dispute Settlement Body of the WTO and invoke the relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Therefore, if a mutual agreement is not achieved, the outstanding disputes could now be referred to a WTO dispute settlement panel for a binding decision. This would be the first textile dispute ever brought before a WTO Dispute Settlement Body and thus the U.S. Administration risks Congressional reaction over a WTO ruling that could go against the U.S.
