

The Role of Textiles Monitoring Body in the Agreement on textile and clothing and its Significance in International Trade

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Abstract: Textiles and clothing are among the sectors where developing and least developing countries have the most to expand from multilateral trade liberalization. The Textile Monitoring Board [TMB], one of the adjudicator forums for disputes resolution under the accord, faces a significant challenge in carrying out this duty because of the agreement on Textile and Clothing. The aim of this article is to discuss the role of the TMB in resolving the transnational disputes and its status in resolving international trade dispute aspects. This article focuses on the working and function of TMB in contemporary days. The article analyses cases, which show the weakness of the TMB in resolving disputes. Lastly, this paper argues for a transparent international trade deals.

1. Introduction

Textiles and clothing are intimately allied both technically and in terms of trade policy. Transnational textiles and clothing trade have been going through deep-seated change under the 10-year transitional programme of the World Trade Organization (WTO). The WTO Agreement on Textiles and Clothing (ATC) 1995 made a large portion of textiles and clothing exports from the least developed and developing countries subject to quotas under a special regime outside the normal General Agreement on Tariffs and Trade (GATT) rules.¹

2. Historical Background

Since 1961, international trade in textiles and clothing has been almost barred from the normal rules and disciplines of the GATT. It was governed by a system of discriminatory restrictions, which deviated from some of the basic principles of the GATT. The system was first incorporated in the so-called Short-Term Cotton Arrangement (“STA”), followed by a Long-Term Arrangement (“LTA”) and, later, by the Multi-fibre Arrangement (“MFA”). The MFA continued until the WTO Agreements came into effect on 01 January 1995.2 The intent of the ATC is to secure the removal of restrictions currently applied by some developed countries to imports of textiles and clothing.³

This article briefly surveys some of the recent and emerging legal issues surrounding the business risk within international trade in textiles and clothing, as well as the resolution of ATC dispute by the TMB. This article also reviews the functioning of TMB and surveys how the TMB deals with the implementation of ATC.

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¹ United Nation Conference on Trade and Development, *Dispute Settlement*, (United Nations, 2003). Available online at <http://www.unctad.org/en/docs/edmmisc232add21_en.pdf> [Accessed on February 5, 2009]. (*United Nation Conference on Trade and Development*, herein after referred as UNCTAD; *United Nation*, herein after referred as UN).

² *Id* at 4.

³.BUSINESS GUIDE TO THE WORLD TRADING SYSTEM, Chapter 14, (International Trade Centre UNCTAD/WTO and the Commonwealth Secretariat, Geneva Agency, 1999). Or See, *Agreement on Textiles and Clothing*, Chapter 14, Available online <http://www.jurisint.org/pub/06/en/doc/C14.pdf> or see, Denis Audet, “Smooth as Silk? A First Look at the Post MFA Textiles AND Clothing Landscape,” *Journal of International Economic Law Advance* 2007 10(2):267-284.

3. Structure and Function of Textiles Monitoring Body: The Forum of Dispute Resolution

In order to supervise the operation of the agreement, the ATC established the TMB, a quasi-judicial body which functions as a forum for disputes under the agreement. The TMB supervises the implementation of this agreement (ATC), examines all measures taken under it and ensures that they are in conformity with the rules.⁴ The TMB consists of a chairman and ten members⁵ (serving in their personal capacity), who are broad representatives of the WTO membership and they rotate at appropriate intervals. The task of the TMB is to supervise the implementation of the ATC. It also examines all measures taken under the agreement on textile and clothing and makes recommendations to countries in cases of disputes. If a country cannot accept a TMB recommendation, it is free to refer the matter to the WTO dispute settlement mechanism. The TMB is a unique institution within the WTO framework⁶. It has to rely on the notifications and the information supplied by members under the relevant article of ATC. Under article 3 paragraph 5,

“The TMB shall circulate the notifications made pursuant to this Article to all Members for their information.”

It may also rely on notifications and reports from other WTO bodies and such other sources as it may deem appropriate.⁷ From 1995 to 2001, special attention has been given by WTO on development of international trade on textiles and clothing within the member countries. In January 1995, the General Council decided upon the composition of TMB. Later in December of 1977, vital changes took place.⁸ The General Council decided upon the composition for the second stage in 1998-2001. The TMB members appointed by WTO members were designated from the following constituencies: (a) The Association of Southeast Asian Nations (ASEAN) member countries; (b) Canada and Norway; (c) Pakistan and China (after accession); (d) the European Communities; (e) Korea and Hong Kong, China; (f) India and Egypt, Morocco, Tunisia; (g) Japan; (h) Latin American and Caribbean Members; (i) the United States; and (j) Turkey, Switzerland and Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovak Republic, Slovenia. Provisions were made for alternates to be appointed by the members in each of the constituencies and in some cases second alternates. There are also two non-participating observers from Members not already represented in this structure, one from Africa and one from Asia.⁹

The TMB faces a significant challenge in carrying out this duty because the ATC does not define the terms “serious damage” or “actual threat.”¹⁰ The difficulty of the TMB’s task is compounded by the fact that it must reach decisions by consensus, with members coming from both the developing countries, which typically favour liberal trade in the textile with apparel industries, and the developed countries, which typically favour restrictions on trade in these sectors.¹¹ In the event that countries involved in a transitional safeguard dispute are dissatisfied with decisions by the TMB, the countries can appeal decisions to the WTO’s Dispute Settlement Body (DSB).¹² The TMB is to evaluate all safeguard actions if members arrive at a bilateral agreement. The TMB is to settle on whether the agreement is acceptable by ATC in addition to this to make suitable proposals to the members concerned.¹³ If an agreement is not attained, the TMB is to swiftly conduct an examination of the matter and to “make appropriate recommendations to the members concerned within 30 days.”¹⁴

⁴ See, Agreement on Textiles and Clothing, Apr. 15, 1994, art. 2, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, The Results of the Uruguay Round of Multilateral Trade Negotiations 85, 86-90 (GATT Secretariat ed., 1994) See, Article 8

⁵ *Id* at Article 8

⁶ See, Agreement on Textiles and Clothing; [Available online at http://www.wto.org/english/tratop_e/texti_e/textintro_e.htm] (Accessed on Dec.31,2008).

⁷ See, Paragraph 3 to article 8; also see, WORLD TRADE ORGANIZATION, ORGANISATION MONDIALE DU COMMERCE, WTO ANALYTICAL INDEX: GUIDE TO WTO LAW AND PRACTICE, WORLD TRADE ORGANIZATION LEGAL AFFAIRS DIVISION, WORLD TRADE ORGANIZATION, Ed.2, 472 (Cambridge University Press, 2007)

⁸ See, Report to the CTG in July 1997 on the implementation of the ATC in the first stage (G/L/179) also See, The Goods Council conducted a major review of the operation of the ATC in the first stage during the final quarter of 1997; its report is in (G/L/224)

⁹ See, *Supra* note 3 also see, WTO, Textiles Monitoring Body (TMB)

The Agreement on Textiles and Clothing, <http://www.wto.org/english/tratop_e/texti_e/textintro_e.htm> [Accessed on January, 12, 2009].

¹⁰ See, Frances Williams, *World Trade Fruits Fail to Ripen-Poor Nations Have Yet to See Benefits from Accord*, Fin. Times, Jan. 10, 1996, World Trade News Section, at 4.

¹¹ See, Alan Tonelson, *Beating Back Predatory Trade*, Foreign Affairs, July/August 1994, at 123.

¹² See, John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* 182 (1989).

¹³ See, Art. 6 Para. 9.

¹⁴ See, Agreement on ATC *supra* Note 2 Art. 6 Para 10 or see Underwear case *infra* note 32.

The burden of proof in intermediary safeguard substance appears to be on the members seeking to invoke safeguard¹⁵ and thus, the TMB's is required to carry out an "inquiry of the matter including the purpose of serious damage." The language suggests that the TMB shall make its own determinations without observance of the parties' realistic conclusion or conclusions regarding grave harm.¹⁶ After reviewing a matter, it must include an invitation to the members concerned to participate. The TMB then issues either an observation or a recommendation,¹⁷ which members are "endeavoured to accept in full."¹⁸ If any member does not accept the recommendations, the member is required to provide the TMB with its reasons within one month of receiving the recommendations. Following consideration of the reasons given, the TMB is to issue further recommendations. If the matter remains unresolved, either party may refer the matter to the Dispute Settlement Body (DSB) and invoke Article XXIII of GATT 1994 and the Dispute Settlement Understanding.¹⁹

The composition of the TMB was arguably the most important earliest problem faced by the WTO.²⁰ The ATC's declaration that TMB members should be "impartial and broadly representative" obviously lacks specificity. Importing countries, primarily led by the European Union, argue that the ten TMB seats should be evenly split between members selected by importing and exporting countries, as it had been the case with the Textile Surveillance Body [TSB]²¹ which administered the MFA²². Exporting countries asked for a majority six of seats based on the relatively large number of exporting countries²³. Importing countries argued that the TMB formation should be a sign of the size of import markets, not the number of countries concerned. Developing countries endangered to hold up all WTO committee chairperson appointments, which would have prevented the WTO from operating effectively-until the dispute was settled.²⁴

The dispute has been resolved by an agreement which for the first three years, gives exporting nations five seats, importing nation's four seats, and creates one "swing" seat to be held by the two groups alternately. Like the ATC, the Multi Fabric Agreement provided for a quasi-legal standing body, the TSB.²⁵ The ATC which replaced the so-called MFA is a transitional instrument established to supervise the application of the Agreement and ensure that the rules and other provisions, including rules on circumvention, administration of restrictions, treatment of non-MFA restrictions, and commitments undertaken elsewhere under the WTO's agreements and procedures,²⁶ are faithfully followed;

The decision-making duties, powers, and organization of the TMB roughly correspond with those assigned to the TSB.²⁷ The MFA authorized the TSB to conduct inquiries, to make recommendations to interested parties regarding any disputed matters, and to review annually all textiles restrictions pursuant to the MFA.²⁸ During the MFA era, the TSB shared power to interpret the MFA with the Textiles Committee, which was a larger entity consisting of all parties to the MFA. Accordingly, if the TSB failed to resolve a dispute under the MFA, the parties could report any legal findings to the Textiles Committee²⁹. Article 11(9) of the MFA further authorized the GATT Council, through normal GATT dispute settlement procedures, to hear textile disputes if the TSB was unable to resolve them³⁰.

¹⁵ See, *Id* at Art. 6 Para 10& 11.

¹⁶ See, Art. 6, para. 10.

¹⁷ See, Art. 8, para. 5-7.

¹⁸ *Id*

¹⁹ *Id* at Para 9

²⁰ See, Sheel Kohl, *Starting Date for Trade Body Agreed*, *South China Morning Post*, Dec. 9, 1994, Business Section, at 14; or See, *Supra* Note 7

²¹ GATT Textile Board Chairman Calls for More Cooperation with WTO Monitoring, 11 Int'l Trade Rep. (BNA) 1898 (Dec. 7, 1994).

²² See, Irene Ngoo, *Last-minute Accord Reached in Textile Row*, *The Straits Times* (Singapore), Feb. 2, 1995, at 4.

²³ John Zarocostas, *Nations Fail to Agree on Makeup of TMB*, *Daily News Record*, Dec. 22, 1994, at 12.

²⁴ See, *Supra* note 7

²⁵ Niels Blokker & Jan Deelstra, *Towards a Termination of the Multi-Fibre Arrangement*, 28 J. World Trade 97, 99-100 (1994).

²⁶ See, Textile and clothing trade policy Available at <<http://ec.europa.eu/enterprise/textile/trade.htm>> (Accessed on 10/19/2008)

²⁷ Henry R. Zheng, *The Fourth Multifibre Arrangement and the New Legal Regime for International Trade in Textiles*, 25 Col. J. Transnat'l L. 301, 334 (1987). Or see, U.S.-Canada Position Still Far from That of Other Countries in Textile Talks, 7 Int'l Trade Rep. (BNA) No. 25, at 907 (Jun. 19, 1990). (explaining the perceptions of the TSB's functioning and their possible impact on perceptions of the TMB).

²⁸ *Id* or See, Robert E. Hudec, *Adjudication of International Trade Disputes* 63 (1978)

²⁹ *Id* at 63

³⁰ See *Supra* Note 26

4. Case Study: the function of TMB

It has been noted by many eminent scholars all around the world that the TMB has frequently failed to reach consensus in adjudicating disputes.³¹ In the past years, there have been many matters, which the TMB has failed to review.³² Somporn Thapanachai (2006) noted that it will upset the goal of the agreement, since the ATC provides for automatic review specifically to avoid the necessity of a formal challenge. Commonly, the TMB returns a case to the parties and asks them to reopen negotiations, after the parties have asked the TMB to make recommendations.³³ A representative of the International Textile and Clothing Bureau asserts that this response amounts to a bilateral rather than global administration of the ATC.³⁴ For these reasons, advocates argue that the TMB ought to be more decisive.

In order to analyze the proper function of the TMB, this paper analyses some of the disputes involving the interpretation of the ATC.

In the landmark case *Costa Rica US Cotton Underwear Dispute*, the US called five WTO countries on underwear exports: the Dominican Republic, Costa Rica, Honduras, Thailand, and Turkey. Bilateral agreements were reached with the Dominican Republic and Turkey. The safeguard action against Thailand was withdrawn. The TMB formally reviewed the unilateral quotas imposed against Costa Rica and Honduras³⁵. According to the US, serious damage to the U.S. domestic underwear industry was evidenced by a decline in production of 3.8% in 1993 and 3.5% in the first nine months of 1994. Domestic producer's share of the domestic market declined from 73% in 1992 to 65% in 1994. In that same two years period, domestic employment declined by 2,321 jobs, or approximately 5% of category jobs. The effect of underwear imports on the domestic industry was evidenced by a 48.7% increase in total underwear imports into the United States between calendar year 1992 and 1994. Imported goods as a percentage of total domestic production were 54% in the year ended September 1994, up from 37% in 1992. Costa Rica accounted for 15% of total underwear exports to the United States in 1994 and experienced a 61% increase in exports to the United States between 1992 and 1994. Costa Rican underwear entered the United States at a landed duty-paid value 69% below the average price of U.S. producers in 1994. Honduras represented 6.7% of U.S. imports in 1994, and saw a 182% increase in exports between 1992 and 1994. In 1994, Honduran underwear entered the United States at a value equal to 62% of the average U.S. producer's price.

The TMB found that Costa Rican and Honduran underwear were not causing serious damage to the U.S. industry; however, the TMB could not reach a consensus on whether the imports constituted a threat of serious damage.³⁶ Consequently, the TMB suggested that the countries and the United States recommence consultations regarding the issue. As the TMB did not recommend rescission of the safeguard, the quota remained in place during additional consultations. Despite consultations advised by the TMB, the United States and Costa Rica failed to reach an agreement. Upon examination of reports from the two countries, the TMB affirmed its earlier findings. Costa Rica requested additional consultations under Article XXIII of GATT 1994 and Article 4 of the WTO Dispute Settlement Understanding (DSU).³⁷ No agreement was reached, and on Feb. 22, 1996, Costa Rica requested a panel review under the DSU. In November 1996, as this Comment was going to press, the DSB panel

³¹ John M. Jennings, *In Search of a Standard: "Serious Damage" in the Agreement on Textiles and Clothing*, 17 Nw. J. Int'l L. & Bus. 272 (1996).

³² U.S. General Accounting Office, *Textile Trade: Operations of the Committee for the Implementation of Textile Agreements* 1, 1 (1996) [hereinafter U.S. GAO]. One of the report documents on the growth of these industries in less developed and developing countries; in the past twenty-five years, the number of textile, clothing, and footwear workers in the United States dropped 30 percent, while the number of such workers in Malaysia increased nearly 600 percent. Pamela M. Prah, *Shift in Textile, Garment Industry Jobs Will Be Spotlighted During ILO Meeting*, Int'l Bus. & Fin. Daily (BNA), Oct. 28, 1996, at D2. From 1970 to 1990 the number of textile, clothing, and footwear workers in Bangladesh increased 416 percent; in Sri Lanka the number increased 385 percent; and in Indonesia, the number of such workers increased 334 percent. *Id.* Due to significant capital investments in the textile industry during the 1970s and 1980s and the slightly less labor intensive nature of the textile industry relative to the apparel industry, the United States textile industry has fared better than the United States apparel industry. Or see Lauren A. Murray, *Unraveling Employment Trends in Textiles and Apparel*, 118 Monthly Lab Rev. 62, 62 (1995).

³³ See, Somporn Thapanachai, *Thailand: Textile Exporters Urge Speedier Liberalisation*, Bangkok Post, May 25, 1996, at 1 or see generally, K. Kristine Dunn, *The Textiles Monitoring Body: Can It Bring Textile Trade Into Gatt?*, 7 Minn. J. Global Trade 123 (1998).

³⁴ *Id.*

³⁵ United States--Restrictions on Imports of Cotton and Man-made Fibre Underwear, Report of the Appellate Body, WT/DS24/AB/R, at 2 (Feb. 10, 1997). [Herein after called as *underwear case*]

³⁶ *Id.*

³⁷ Notices, WTO Dispute Settlement Proceedings Concerning U.S. Restrictions on Cotton and Manmade Fiber Underwear from Costa Rica, 61 Fed. Reg. 12,12 (Office of the U.S. Trade Representative 1996).

found that the United States had not demonstrated *serious damage*, apparently based largely on the fact that the US had reached large quota levels agreements with the other countries called in this category.³⁸

In this report, the panel articulated a standard for a finding of “serious damage” and “threat of serious damage.” To demonstrate “serious damage,” the panel required the party to show damage had already occurred. To demonstrate “actual threat of serious damage,” a party must supply evidence that, unless action is taken, damage will most likely occur in the future.” Generally, the panel determined that Article 6 of the ATC should be interpreted narrowly to affect its clear objective that transitional safeguards are to be used as sparingly as possible.³⁹

In the *Indian Dispute (Blouse Case)*, India ultimately invoked the formal WTO dispute settlement procedures after the TMB failed to settle its dispute with the United States regarding restrictions on woolen clothing⁴⁰. In April 1995, the United States, pursuant to Article 6 of the ATC, requested consultations with India for the purposes of imposing quotas on woven wool shirts and blouses. The parties failed to reach a mutual settlement within the 60-day consultation period, so that the United States imposed the restraint and notified the TMB of its actions. In the fall of 1995, the TMB ruled that the significant increase in the Indian shipments of woven wool shirts and blouses to the United States caused actual threat of serious damage to U.S. manufacturers. Although India requested that the TMB examine its arguments in this matter, in accordance with Article 8(10) of the ATC,⁴¹ the TMB considered its review complete, and thus made no additional recommendations. The United States blocked India’s request for the establishment of a Dispute Settlement Understanding panel to examine these complaints⁴². Three weeks later, at a special meeting, India again requested that the WTO Dispute Settlement Body establish a panel to reconsider its complaint. Under the new WTO rules, a second such request must be granted.⁴³

On January 6, 1997, a WTO dispute resolution panel issued a report on this matter which ruled that the United States import restrictions violate the ATC. Again, the dispute settlement panel determined that the United States did not adequately document even an actual threat of serious damage. Despite the panel's finding that the United States had not suffered damage, U.S. trade officials maintained that this decision was, in fact, a victory for the United States. They claimed that the Dispute Settlement Body panel report merely demanded that the U.S. Administration incorporate more data in those petitions it submitted to the TMB. In its decision, the panel clarified that it was examining merely the legality of the relevant United States actions, rather than the responses of the TMB in this matter.⁴⁴ In response to this report, however, it is expected that the TMB will “tighten its requirements of proof of damage.”

In the *Men's Coats dispute*, the United States called Brazil and India on this category⁴⁵. The call against Brazil was dropped prior to a TMB hearing.⁴⁶ After the consultations failed, the United States imposed a unilateral safeguard on India's products in this category, and the TMB reviewed the U.S. action and the serious damage determination⁴⁷. Alleged serious damage to the U.S. industry was demonstrated by a 4.2% decline in production and a 14.3% decline in market share in this category during the nine month period ending September 1994. Between 1993 and 1994, 275 jobs-4.8% of total category jobs-were lost. However, the decline in U.S. production was only 1.9% for the twelve month period ending September 1994. The connection between domestic industry damage and imports was indicated by an increase in total category imports of 40.2% in the year ending January 1995. Imported items as a percentage of domestic production increased from 85% in 1992 to 111% during the nine month period ending September 1994. Imports from India rose by 105% and accounted for 24% of total U.S. imports in the year ending January 1995. In 1993 and 1994, India was the leading exporter of coats to the United States. In 1994, Indian coats in this category entered the United States at a landed, duty-paid price 70% below the

³⁸ Joseph Pelzman & Kathleen Rees, *The Control of Textile and Apparel Trade under the WTO: What is the Track Record ?*, Paper presented at the International Trade and Finance Association meetings, on *The Global Economy at the Turn of the Century*, pp.16 (May 27-30, 1998 Atlantic City, New Jersey). Available online at <http://www.sbpn.gwu.edu/eucenter/euirc/The%20Control%20of%20Textile%20and%20Apparel%20Trade%20Under%20the%20WTO.pdf> [Accessed on Jan, 01, 2009].

³⁹ See, *Supra* 31

⁴⁰ United States--Measure Affecting Imports of Woven Wool Shirts and Blouses From India, Jan. 6, 1997, WT/DS33/R,

⁴¹ See, K.R.GUPTA, *WTO TEXT*, 1st ED, Vol.1, 215 (Atlantic Publisher and Distributors, 2006)., also see, *supra* note 37.

⁴² See, *Textiles: U.S. Temporarily Blocks Move by India on Textile Import Curbs*, 13 Int'l Trade Rep. (BNA) No. 14, at 577 (Apr. 3, 1996).

⁴³ See, *Textiles: WTO to Probe Indian Complaints against U.S. Textile Safeguards*, 13 Int'l Trade Rep. (BNA) No. 17, at 670 (Apr. 24, 1996).

⁴⁴ See, *WTO Panel Rules Against United States in Case of Woven Wool Shirts from India*, 14 Int'l Trade Rep. (BNA) No. 2, at 47 (Jan. 8, 1997).

⁴⁵ Committee For the Implementation of Textile Agreements, *Statement of Serious Damage: Category 434 (Men's and Boy's Wool Coats Other Than Suit Type)* (1995)

⁴⁶ *WTO's Textile Monitoring Body to Review Curbs on Woolen Garments*, 12 Int'l Trade Rep. 1382 (Aug. 16, 1995)

⁴⁷ *U.S. Gets Mixed Rulings By WTO Group on Restraints on Indian Wool Imports*, 12 Int'l Trade Rep. (BNA) 1571 (Sept. 20, 1995)

U.S. domestic producer's average price. The TMB found no serious damage or threat thereof and recommended that the United States rescind its safeguard. The United States has since rescinded the quota.

In the *Women's Coats Case*, the United States called two countries in this category—India and Honduras⁴⁸. A unilateral safeguard was imposed against Honduras before a bilateral accord was reached as part of an agreement that included underwear and nightwear. However, the United States was unable to reach an agreement with India and imposed a unilateral quota against the Indian products. The TMB reviewed the action. “Serious damage” to the U.S. industry was alleged based on a decline in domestic production of 1.0% during the nine month period ending September 1994 and 1.8% during the twelve month period ending September 1994. The U.S. producers' market share declined by 6.8% in the first nine months of 1994 and was down by 4.4% for the twelve month period ending September 1994. Between 1993 and 1994, the United States reported a loss of 363 jobs, which represented 16.2% of the category jobs. The relationship between damage and imports was reflected by the fact that imports rose by 9% during the year ending January 1995 and captured 59% of the U.S. market. In this period, Indian exports surged by 402% to capture 3.1% of the United States market. In 1994, imports from India entered the United States at a price 79% below the U.S. producers' average price. Although the TMB found that there was no serious damage, it could not reach a consensus on whether there was a threat of serious damage. Since the TMB did not recommend rescission of the safeguard, it remained in place. India requested that a WTO trade dispute panel be set up to hear this matter, as well as a dispute regarding woven wool shirts and blouses⁴⁹. In March of 1996, the United States turned down India's request for dispute panels. However, pursuant to the terms of the WTO's dispute settlement procedures, at the DSB's next meeting, which was held in April 1996, the DSB agreed to set up dispute panels. Subsequently, the United States withdrew the safeguard on women's and girl's wool coats, leaving only the dispute over woven wool shirts and blouses, a matter in which the TMB unanimously agreed there was a threat of serious damage, to be heard by a dispute panel.⁵⁰

In the *Argentina – Textiles and Apparel* case, the complainant, the United States claimed that because Argentina had violated Articles II and VIII of the GATT with respect to textiles and apparel, it had also consequently violated Article 7 of the ATC. The Panel however declined to rule on this claim, exercising the principle of judicial economy. In this case the parties and third parties have come into long and well-argued debates as to whether Article 7 covers only actions and compulsion covered by the ATC, *i.e.*, quantitative restrictions, or whether the purpose of Article 7 is also to ensure that measures other than quantitative restrictions such as tariffs, non-tariff barriers, licensing provisions and intellectual property provisions are not used in a manner which undermines market access in the textile and apparel sector for all WTO Members. The TMB panel report decided to exercise judicial economy and not to address the US claim related to the ATC. Such decision is consistent with the findings of the Appellate Body report in the *Shirts and Blouses* case. The TMB panel did not see how a finding on Article 7 of the ATC would help the parties to resolve their dispute.⁵¹

5. Summary Overview of Disputes Cases

In the above cases, certain findings of the panels were appealed to the Appellate Body. The main characteristic of the Panel and Appellate Body rulings in these cases have been well thought-out in Section 3 of ATC in which the violation of an ATC obligation was a supplementary claim. At the outset, it can be said that the TMB from both exporters and importers take in the body's lack of lucidity, a sense of neutrality in the body, and a failure to reach consensus in a number of cases. Like in India's Underwear case, the TMB failed to approach the legality issue. It can be said that the TMB had not been able to deal fairly with all the issues at par. For example, in the *Men's Coats dispute*, no serious damage was found and it was suggested that US rescind its safeguard. The US has rescinded the quota consequently and the case was later withdrawn. In all these cases, the TMB did not find any evidence to support restriction and this very well indicates that the safeguard mechanism was hurriedly employed without appropriate examination. It is significant to keep an eye on this mechanism so that it does not disrupt the whole process.

In *Woven Blouses*, the issue was the hazard of serious damage, but it is not clear whether that case marks the minimum degree of damage necessary to establish a threat, the threshold amount of damage before actual serious damage is recognized, or whether it is more representative of a middle range of threatened serious damage.⁵² It was seen in *Woven Blouses* that the TMB was not able to reach a consensus on the threat of serious

⁴⁸ Committee For the Implementation of Textile Agreements, Statement of Serious Damage: Category 435 (Women's and Girl's Wool Coats) (April 1995)

⁴⁹ See, Indian Complaint Against U.S. to be Taken to WTO Dispute Body, Int'l Trade Daily (BNA), (Jan. 11, 1996)

⁵⁰ See, WTO Dispute Settlement Proceedings Concerning U.S. Restrictions on Woven Wool Shirts and Blouses From India, 61 Fed. Reg. 24,516 (Off. of the U.S. Trade Rep. 1996).

⁵¹ See, *supra* note 2 at 43.

⁵² Sheel Kohl, *Territory Wins Textile Battle in WTO Ruling*, South China Morning Post, Sept. 29, 1995, at 178.

damage.⁵³ The standard is unacceptably vague, and demonstrates the need for the publication of reasoned opinions by the TMB to explain its decisions.⁵⁴

6. Weakness of the TMB in Resolving Disputes

The TMB has commonly failed to reach harmony in adjudicating disputes⁵⁵. The Agreement, however, does not specify what shall come to pass in such an event. Thus, when disputes have arisen inside the situation of trade in textiles and apparel, the TMB has rarely demonstrated ample leadership for succeeding disputes and drawing additional analysis⁵⁶. In 1995 alone, three textile matters have been brought to the WTO Dispute Settlement Body after the TMB aborted to resolve the disputes⁵⁷. In calculation, there are many matters which have been pending for long periods of time and which the TMB has yet to be evaluated. This allows uncharacteristic procedures to stand. Some assert that this upsets the goal of the Agreement since the ATC provides for habitual review purposely to avoid the necessity of a formal challenge. Frequently, the TMB returns a case to the parties and asks them to revive negotiations, after the parties have asked the TMB to make recommendations. This shows that the International Textile and Clothing Bureau emphasize amounts to bilateral rather than universal supervision of the ATC.⁵⁸ For these grounds, advocates, leading law firms and international law practitioners and many eminent scholars have also argued that the TMB has to be extra decisive.

To boost the functions of TMB under the current setting, it necessitates more transparency, honesty, objectivity, integrity, care and openness in order to increase the sense of legitimacy and fairness in TMB decision-making⁵⁹. Openness and objectivity are characteristics of decision-making bodies which base their views on lawful factors and reason.⁶⁰ One of the simple and lucid arguments for better and adequate dispute resolution is based on three basic elements: Firstly, directness of the parties to approach the forum of resolution; Secondly, the openness and fairness of its proceedings between the parties; and lastly, the inability of the TMB to issue a finding and the admittance of its lack of consensus to say anything about the dispute.

7. Conclusion

The current political and economical situations and the flux which have arisen between member countries in respect to the effective functioning of TMB indicate that the phase-out of the MFA is more likely to be successful if the TMB is viewed as a fair, believable, and translucent body. Usually, the efficiency and good organization of dispute settlement trial are essential for understanding the reimbursement of trade liberalization in any sector.⁶¹ The TMB must generate a rational body of law which must interpret the grave injure standard and must implement the characteristics of honesty, objectivity, integrity, care and openness. Unless the TMB improves its performance, confidence in its processes will be diminished, and traders will increasingly find swap methods of dealing with the dispute, including appeal to the DSB and violation of international trade law. There is a need for making bureaucratic and political changes in TMB, such as opening up its procedures. These procedural changes should enable the TMB to better define the substantive standard and to more effectively manage the implementation of the ATC.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See, Lauren A. Murray, *Unraveling Employment Trends in Textiles and Apparel*, 118 Monthly Lab Rev. 62, 62 (1995)

⁵⁶ Somporn Thapanachai, Thailand: *Textile Exporters Urge Speedier Liberalisation*, Bangkok Post, May 25, 1996, at 1

⁵⁷ See, *supra* 46 at 64-65

⁵⁸ *Id.*

⁵⁹ See, Michael K. Young, *Dispute Resolution in the Uruguay Round: Lawyers Triumph Over Diplomats*, 29 Int'l Law. 389, (1995), 408-10.

⁶⁰ *Id.*

⁶¹ See, *Supra* Note 27 at 343